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USTR IDENTIFICATION OF PRIORITY PRACTICES AND COUNTRIES UNDER SUPER 301 AND SPECIAL 301 PROVISIONS OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

JUNE 8, 1989

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USTR IDENTIFICATION OF PRIORITY PRACTICES AND COUNTRIES UNDER SUPER 301 AND SPECIAL 301 PROVISIONS OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

THURSDAY, JUNE 8, 1989

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
FRIDAY, MAY 26, 1989

SUBCOMMITTEE ON TRADE #13
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, ANNOUNCES A HEARING ON THE UNITED STATES TRADE REPRESENTATIVE'S IDENTIFICATION OF PRIORITY PRACTICES AND COUNTRIES UNDER THE "SUPER 301" AND "SPECIAL 301" PROVISIONS OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced a public hearing on the Administration's identification of "priority practices" and "priority countries" under section 1302 of the Omnibus Trade Act, commonly known as "super 301"; and its identification of a watchlist of countries under section 1303, commonly known as "special 301." The hearing will be held on Thursday, June 8, 1989, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.

On May 25, 1989, the Administration designated Japan, India, and Brazil as priority countries under the super 301 provision of the Omnibus Trade Act. Specific practices in each country -- government procurement of supercomputers and satellites and standards for forest products in Japan; insurance services and investment in India; and import licensing in Brazil -- were identified as issues for investigation and negotiation.

Under the special 301 provision relating to intellectual property rights protection, the Administration established a priority watchlist of seven countries -- Brazil, India, Mexico, the People's Republic of China, Korea, Saudi Arabia, Taiwan, and Thailand -- for review by November 1, 1989, as possible priority countries, based on progress made in dealing with specific issues of concern in each country. A separate watchlist of seventeen countries also was established, for which stepped up efforts will be made to reach agreement on improved protection of intellectual property rights.

The Subcommittee is interested in hearing the views of the Office of the U.S. Trade Representative and the private sector on the process for identification of such practices and countries; the prospects and timetable for resolving these issues bilaterally; the implications of such designations on other countries, and practices which were not designated; the potential effect of this process on progress in the Uruguay Round; and other related issues which witnesses care to address.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard must be made by telephone to Harriett Lawler or Diane Kirkland [telephone (202) 225-1721] by close of business Friday, June 2, 1989. The telephone request should be followed by a formal written request to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee office [(202) 225-3943].

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are

scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 150 copies of their prepared statement to the Subcommittee on Trade office, room 1136 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any interested person or organization may file written comments for inclusion in the printed record of the hearing. Persons submitting written comments for the printed record should submit at least six (6) copies of their comments by the close of business Friday, June 16, 1989, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing a written statement for the record of the printed hearing wish to have their statement distributed to the press and the interested public at the hearing, they may provide 75 additional copies for this purpose to the Subcommittee office, room 1136 Longworth House Office Building, prior to the start of the public hearing.

SEE FORMATTING REQUIREMENTS BELOW:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will **not** be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

* * * * * * * * * * *

Chairman GIBBONS. Good morning, ladies and gentlemen.

As everyone knows, this is a meeting of the Trade Subcommittee of the Ways and Means Committee. We are here today to begin discussion on Super 301 and Special 301 including the action of the administration in carrying out requirements of law and the whole matter of general enforcement. We will hear from Ambassador Hills, the U.S. Trade Representative, including any observations she may have and any questions we may want to propound concerning our trade program.

Before we start, Ms. Hills, let me say that broadly speaking, I approve of what you have done in the 301 area.

I think that your statement was tough enough to say to all of our trade partners we mean business, but it was wise enough to say that we are here to work with you and to try to work out these differences.

The response I have received from within the United States and from our trading partners has been generally constructive.

In explaining 301 to these people, I say it is like any other matter of jurisprudence. In the Anglo-American system and most European systems, you try to define the issues in any dispute and then to stick to those issues in the settlement of a dispute, and not just constantly grousing about the subject.

The well can be poisoned if we grouse too much, particularly if we grouse without any specificity.

I look upon 301 as a dispute settlement mechanism, one that gets waste away from the meat, one that gets right down to the point.

While there perhaps are more practices you could have pointed out, I think you took a wise course. There is a limit to your ability to negotiate too many matters.

After all, we are dealing with our sovereign countries. I think you hit very well that happy point in the middle between toughness and firmness, making clear the fact that we were not out there to bully.

I will be glad to yield to any of my colleagues if they have observations before you start.

Are there observations any of my colleagues would like to make before Ambassador Hills starts?

Mr. SCHULZE. Mr. Chairman, I have a little statement I would like to make.

I would like to welcome Ambassador Hills.

Two weeks ago the Office of the U.S. Trade Representative published its list of "unfair traders" under the Super 301, and Special 301 sections of the omnibus trade bill of 1988.

Among those priority countries listed—for a variety of barriers they maintain to impede the entry of certain U.S. goods and services into their markets—were India, Brazil, and Japan.

After seeing yesterday's Journal of Commerce article regarding Japan's seeking calm dialogs with the United States on trade, I feel compelled to comment specifically on this relationship.

According to the article, Foreign Minister Mitsuzuka assured United States Ambassador to Japan, Michael Armacost, that Japan, which hopes to avoid a further deterioration in the bilateral relationship between the two countries, realizes the frustration ex-

isting in Washington over the $57 billion annual trade surplus that Tokyo enjoys.

But, the Minister added that there is little Japan can do in the immediate future which would reduce the massive trade surplus with the United States by any large amount.

I just find that line absolutely unacceptable. In fact, Mr. Chairman, you, along with a number of other Members, recently sent a "Dear Colleague" letter to the House membership expressing your disapproval of the proposed FSX arrangement with Japan. Importantly, you cited as one of your reasons the fact that Japan could have proven its verbal commitment to redressing its trade imbalance with the United States by purchasing 130 F-16 fighter jets from the United States at a price tag of $3 billion—and it failed to do so. Mr. Chairman, I agree with your line of reasoning 100 percent.

And, it is not as if Japan hasn't had other opportunities to prove that the concerns of this country's doubting Thomases are unfounded.

One such missed opportunity came when it refused to allow the hulls of its Aegis-equipped cruisers to be constructed in the United States.

Had Japan permitted the cruisers—or even their hulls—to be built in the United States it would have seized a golden opportunity to take a meaningful swipe at the trade imbalance to the tune of several billion dollars.

However, Japan once again only saw fit to acquire the United States technology which it was lacking—obviously, it is not very tough to figure out what is going on here.

And, how about Kansai and other public works projects? In an area in which the United States enjoys a distinct and widely acknowledged comparative advantage—the construction services industry—Japan has virtually gone out of its way to keep the United States out of this lucrative market.

In fact, out of approximately $2.6 billion worth of Kansai-related projects already procured, U.S. firms have received only $2.5 million worth—that is one-tenth of 1 percent. This is not a clear sign that Japan wants to trade fairly, it is a measly pile of chickenfeed.

Japan has simply got to quit playing the poor, helpless, innocent, economic runt of the world. It is prosperous, it is advanced, it is an economic giant, and, it is a preeminent powerhouse in the global trading order. And, by God, it deserves enormous credit for attaining all it has in such a short period of time—and, I will give Japan its due credit.

At the same time, however, I would like to send a very straightforward message: Along with the power and prosperity, Japan must assume a commensurate share of responsibility in acting out its lead role in the international arena. Simply stated, the time has come.

Ambassador Hills, on your confirmation hearing, you spoke most sincerely to the need for preserving the credible threat of retaliation as a means of prying open markets abroad.

I laud you for that attitude and, now more than ever, ask that your commitment to standing by it be stronger than ever. The

long-term economic interests of this great nation can afford nothing less.

Thank you.

Chairman GIBBONS. Thank you, sir.

Mr. Pease.

Mr. PEASE. Mr. Chairman, Thank you very much.

I would like to welcome the Ambassador as well and to say how pleased I am with her performance thus far as our Trade Ambassador. I was particularly pleased with her on Super 301.

I know that the administration was under a lot of pressure not to name names. Obviously, no one likes to be named. No country likes to be named.

The decision was made, I think, with your strong support to be specific as to practices and as to nations.

I think that is all to the good and certainly to your credit.

I was especially pleased that you named Japan among those priority nations for our negotiations. I think it is important for us to make the point that we do not intend to in any sense bash Japan when we insist Japan be on that list.

It is simply a fact of life that Japan accounts for 40 percent of our worldwide trade deficit and that it is likely to continue that posture for quite some time in the future.

Later we will hear today from the Manufacturers Association. Their testimony will include a graph showing that, despite the devaluation of the dollar, our trade deficit with Japan has been remarkably stable, in the $50 to $58 billion range over the last 4 years and is projected to be about $53 billion this year, whereas over the same 4 years when the United States dollar was devaluated against the European currency as well, there has been a dramatic decrease in our trade deficit with the European Community.

Indeed, this year it looks like we may run a surplus.

So clearly, Japan is in a different league from the European Community, and it is not being unfair or inhospitable or nasty to Japan for us to insist that we take a very close look at all of the practices which may or may not impede our free exchange of trade in goods with Japan.

Again, I just want to commend you for excellent work thus far in your tenure.

I hope we continue to see very strong leadership on your part.

Thank you.

Chairman GIBBONS. Thank you.

Other statements?

Ambassador Hills, we will be happy to hear from you.

STATEMENT OF HON. CARLA A. HILLS, U.S. TRADE REPRESENTATIVE

Ambassador HILLS. Thank you, Mr. Chairman, and members of the committee. I have filed a longer written statement.

I thought I would just make a few points with your permission.

Chairman GIBBONS. All right. As is customary of this committee, your full statement will be admitted to the record unless there is objection.

Without objection, it is admitted.

Ambassador HILLS. Thank you.

It is a pleasure to be here and have an opportunity to talk with you about our trade strategy which we believe is clear.

It is to open markets and expand international trade within a multilateral trading system based upon clear and equitable rules.

Our challenge is to muster the tools at our disposal including section 301 toward that end. I am pleased to report that we have been able to use the leverage afforded by Super and Special 301 to win significant trade liberalization through bilateral negotiations in the month preceding our Super and Special 301 decisions announced May 25.

In our Super 301 discussion, the Koreans agreed to open markets in areas of priority to the United States, investment, localization, and agriculture. Taiwan developed an action plan that promotes the opening of the Taiwan market to all exporters, and their plan includes tariff reduction, simplification of import licensing and liberalization revisions, the insurance and banking laws. We expect that these two countries will implement those plans and thus maximize trade liberalization.

We will continue to press for further liberalization measures especially in agriculture. We also obtained significant improvement in the protection of intellectual property rights through agreements with the People's Republic of China, Colombia, and Taiwan, under Special 301.

These successes underscore the value of bilateral negotiations on particular practices to complement our multilateral negotiations.

In identifying our trade liberalization priorities under Super 301, we gave highest priority to a successful conclusion of the Uruguay round of negotiations by December 1990.

We focused on the elimination of specific practices which present serious barriers to trade in our representative of broader areas of concern in the Uruguay round. These broader areas are quantitative restrictions in import licensing where we identified Brazil for its restrictive licensing of both agriculture and manufactured products; exclusionary government procurement where we identified Japan's practices in satellites and supercomputers, standards and technical barriers where we identified Japan's forest products; restrictive investment measures where we identified India for performance requirements; and barriers in trade in services where we identified India for its prohibitions on the sale of insurance.

We will address other practices, including trade distorting subsidies, agricultural policies and other barriers listed in the National Trade Estimates Report in our ongoing bilateral and multilateral negotiations with our trading partners.

We, of course, retain the right to self-initiate 301 petitions on these other practices throughout the year. American industries remain free to petition on their own as well.

By June 16, we will initiate investigations under section 302 on all six priority practices identified under Super 301.

At that time we will request consultation with our trading partners. We will do our best to eliminate these barriers not simply to expand U.S. exports, but to open markets and expand trade for the benefit of all nations.

In Japan we face special problems. As you, Mr. Chairman, mentioned, in the form of structural rigidities that impose extraordinary impediments to our export expansion.

For that reason, the President has directed the Secretaries of State and Treasury to join USTR in pursuing with the Government of Japan negotiations on a variety of structural adjustment matters, including balance of payment adjustment, the distribution system, pricing mechanisms, and anticompetitive practices.

I am optimistic that we will have the cooperation of the Government of Japan in launching these negotiations.

With respect to the Special 301 statute, we did not identify any country as a priority country under that provision because we had made such considerable progress in ongoing bilateral and multilateral negotiations. Instead, we placed eight countries on a "priority watch list" and we have developed accelerated negotiation plans for each of these countries and will review the status of each of them on November 1.

An additional 17 countries have been placed on a watch list for special attention. Progress in these negotiations, we feel, is essential.

Denial of adequate and effective property rights harms the economic interests of the United States and also undermines the creativity essential to the technological and economic growth of all countries. Growth in trade is really what we are after; that is what I think Congress intended in the use of both Super and Special 301.

We do not seek mindless name-calling to vent frustration at a stubborn and difficult trade deficit, nor a lock step forward retaliation.

Rather, we seek a constructive setting of priorities and responsible application of leverage to achieve maximum market opening results.

I would be pleased, Mr. Chairman, to answer your and the committee members' questions.

[The statement of Ambassador Hills follows:]

STATEMENT OF

CARLA A. HILLS

UNITED STATES TRADE REPRESENTATIVE

BEFORE THE

HOUSE OF REPRESENTATIVES

COMMITTEE ON WAYS AND MEANS

JUNE 8, 1989

Mr. Chairman and Members of the Committee, I am pleased to appear before you today to discuss implementation of the "Super" and "Special" 301 provisions of the Omnibus Trade and Competitiveness Act of 1988.

On May 26 I forwarded to you the Administration's report of trade liberalization priorities, as required by the Super 301 statute. I would like to highlight some important aspects of that report in my testimony today.

First, I would like to emphasize that our identification of priorities in both the Super and Special 301 exercises was part of our overall trade strategy: to open markets and expand international trade. We will use Super and Special 301, like other trade policy tools at our disposal, to create an ever-expanding multilateral trading system based upon clear and enforceable rules.

Recent Use of Effective Leverage

In that regard, we have already used the leverage afforded by both of these tools in the months preceding our Super and Special 301 decisions. Bilateral negotiations with the Republic of Korea resulted last month in significant trade liberalization by Korea in areas of priority to the United States: investment, localization, and agriculture.
In investment,

- o the Korean government will no longer impose performance requirements on foreign investment, either formally or informally, except under some very limited and well-defined exceptions.

- o The government will replace its current case-by-case investment screening process with a notification system that will not require Korean government approval for most foreign investment in both the manufacturing and service sectors.

In localization (a system of import barriers),

- o the Koreans agreed to product standards, technical regulations, testing requirements, and customs procedures that will bring them in line with internationally accepted procedures.

- o They will also repeal "border closure provisions", which include import bans designed to encourage local production.

In agriculture, the Koreans announced a significant agricultural liberalization proposal on April 8 which includes approximately 70 items requested by the United States.

- o They have agreed to accelerate the liberalization of products originally scheduled for 1990 and 1991.
- o They will reduce tariffs on seven products of importance to U.S. exporters.
- o They will eliminate their quota on whiskey and an orange juice blending requirement as well as substantially increase the orange juice concentrate quota.

While the Koreans' agriculture liberalization package fell short of all that we had sought, we will continue to press Korea for further liberalization of agriculture -- particularly in the context of the GATT Balance of Payments Committee review of Korea, which takes place later this month.

Korea has agreed to take these steps toward trade liberalization, not only for U.S. exporters and investors, but for the benefit of firms around the world.

Similarly, the authorities on Taiwan consulted closely with U.S. negotiators to develop an action plan that liberalizes trade and promotes the opening of the Taiwan market to all exporters.

- o In May, Taiwan's cabinet submitted to the Legislature a proposal for tariff reductions on 4,700 items, including reductions on most of the manufactured items we requested. Effective May 1, the cabinet reduced tariffs on 378 industrial items using their administrative authority.
- o Taiwan has also proposed a simplification of import licensing procedures and a removal of certain restrictions on the distribution of consumer products.

In services,

- o Taiwan's cabinet proposed liberalizing revisions to the Insurance Law and the Banking Law scheduled to be implemented by spring 1990 and the end of 1990 respectively.

I stressed to Taiwan officials that we based our decision not to identify Taiwan as a Super 301 priority trading partner on the expectation that they will vigorously implement this trade action plan and maximize trade liberalization. Improved access for agricultural products remains a matter of major concern. We intend to raise this issue bilaterally and expect to see additional improvements in market access for agricultural products of interest to the United States.

Our negotiators have also made substantial progress in obtaining improvements in intellectual property protection from various trading partners in connection with the Special 301 provisions of the Trade Act. Significant agreements have recently been achieved with the Peoples' Republic of China, Colombia, and the authorities on Taiwan.

- o In May, the Chinese government agreed to submit copyright legislation to their Congress by the end of this year which will include copyright protection for computer programs. We also made some progress for patent protection in China.

- The Colombian government resolved various access issues affecting the motion picture industry including the remission of royalties. From now on, the motion picture industry can remit royalties based on actual earnings rather than on the basis of the more subjective title-by-title approval by Colombia's Royalty Committee.

- The Taiwanese will revise their Copyright Law to protect translation rights in copyright and to strengthen protection for films, videocassettes, and other audiovisual works. In June, we will begin intensified discussions aimed at improving the enforcement of all intellectual property laws.

These initiatives underscore the value of bilateral negotiations on particular practices to complement multilateral negotiations on generic rules to discipline such practices. And that is the approach we will take as we continue our implementation of Super and Special 301.

Super 301 Priorities

In identifying our trade liberalization priorities, we have given highest priority to a successful conclusion of the Uruguay Round negotiations by December 1990. We will use Super 301 negotiations to support and complement our Uruguay Round initiatives. Thus we will focus on the elimination of specific practices which, in addition to being serious barriers to trade, are emblematic of broader areas of concern to the global trading system.

By now you are probably quite familiar with the six priority practices and three priority countries we have identified. The countries we have identified for priority attention are Japan, India, and Brazil. The specific practices we have identified as trade liberalization priorities can be grouped into five broad categories, corressponding to the categories of barriers we have used in our annual trade barriers report. They are:

Quantitative restrictions and import licensing
1. Restrictive licensing of agricultural..... Brazil and manufactured products

Exclusionary government procurement
2. Satellites..... Japan
3. Supercomputers..... Japan

Standards and technical barriers
4. Forest products..... Japan

Trade-related investment measures
5. Performance requirements..... India

Barriers to trade in services
6. Insurance..... India

In identifying these priorities, we considered comments received from a number of American firms, from this Committee and from other members of Congress. We also sought the advice of our private sector advisors. We also took into account:

-- the potential to increase U.S. exports if these practices are eliminated;

-- the precedential effect of seeking and obtaining their elimination;

-- the likelihood that 302 investigations would advance our efforts to eliminate these practices; and

-- the compatibility with our objectives in the Uruguay Round.

These generic categories of trade barriers, and the six individual priority practices they encompass, obviously do not represent all of the major trade barriers facing American exporters, but they are among the most important.

Other trade barriers, including those listed in the National Trade Estimate Report, are and will continue to be addressed in on-going negotiations with our trading partners. Principal among them are trade-distorting subsidies and agricultural policies. These practices are no less important than those identified as priority practices under the statute. However, we have determined that their elimination can be better pursued at this time outside of section 301, especially through multilateral negotiations in the Uruguay Round.

We will also continue to pursue trade barriers already the subject of investigations, negotiations, and action under section 301, including, for example, Japan's practices affecting construction services and semiconductors.

Finally, as part of the Super 301 exercise next year, we will reevaluate the status of certain practices not identified this year, in light of progress made in bilateral and multilateral negotiations.

By June 16 we will initiate investigations under section 302 of the Trade Act on all six priority practices, and we will request consultations with our trading partners. At the OECD meeting held in Paris two weeks ago, our Japanese counterparts objected strenuously to the Super 301 rubric but did indicate a willingness to talk to us about our complaints. We view this as a positive sign. Our negotiators will strive to reach a satisfactory solution to all of these generic and specific problems, seeking the removal of trade barriers and distortions to strengthen the multilateral trading system.

In addition, the Japanese agreed in Paris to begin discussions on a broad array of structural impediments to trade. Officials from both countries are meeting this week at the biannual U.S.-Japan Economic Subcabinet Consultations. On that occasion, we will hold separate discussions with Japanese officials regarding how we might begin to address various structural impediments to trade, balance-of-payments adjustment, distribution systems, pricing mechanisms, and anti-competitive practices such as bid-rigging, market allocation, and group boycotts. This Structural Impediments Initiative will take place outside section 301. USTR, Treasury, and the State Department will lead the discussions, with participation by other interested agencies.

Our approach to Super 301 consists of a number of components that are integral parts of a comprehensive package. Our implementation of the Super 301 provision is not simply an exercise in identifying specific practices or countries; rather it is one element of a broader strategy aimed at economic growth through trade expansion. The Super 301 process supports this strategy by concentrating our efforts this year on the elimination of practices that, in addition to being serious barriers in themselves, are indicative of broader areas of concern. This approach will enable us to advance general trade policy objectives through concrete, focused initiatives.

Special 301 Priorities

Because we have made considerable progress to date in on-going bilateral and multilateral negotiations with respect to intellectual property protection, we did not identify any countries at this time as "priority countries" under Special 301. Instead, we have created a "Priority Watch List" upon which we have placed the following: Brazil, India, Republic of Korea,

Mexico, People's Republic of China, Saudi Arabia, Taiwan and Thailand. An additional 17 countries have been placed on a "Watch List" for special attention.

For those eight countries on the Priority Watch List we have developed an accelerated Action Plan for resolving outstanding issues. By November 1 we will review the status of each of the eight under Special 301. Progress in negotiations is essential, for the denial of adequate and effective protection of intellectual property rights is not only harmful to the economic interests of the United States, but such denial also undermines the creativity, investment and invention that are the essential to the economic and technological growth of all countries.

Chairman GIBBONS. I thank you for your statement. I say again I commend you for having applied this provision in a wise, reasonable, and fair manner.

As I go around the world, I often run into the comment, "Well, America has barriers to its trade."

What is the policy of your office in discussing these barriers with our foreign friends?

Ambassador HILLS. We do have barriers, protective barriers that we aim to bring down in the multilateral negotiations that are ongoing in Geneva within the Uruguay round. We are committed to opening markets and expanding trade, which means that our protections will have to be put on the table along with those of other nations.

At the same time, I hasten to tell other nations that we are the freest and most open market in the world and that even in those areas that are most restricted, we do import per capita far more than our largest trading partners.

Whether I am focusing on steel or textiles or sugar, in each of those areas we as a country import per capita more than our major trading partners by a substantial margin. That does not mean that we are not dedicated to the proposition that all trade restrictions ought to be eliminated.

We wish to rid the world of the trade distortions that come from protectionist measures all across the economic spectrum. We simply cannot afford unilaterally to bring down our restrictions unless the nations of the world cooperate and do likewise. That is why we give such high priority to our goals in the Uruguay round.

Chairman GIBBONS. Having said that, I have something that worries me. I keep looking at your office and the assets that it has.

No criticism upon the caliber of people, but when you look at all the work that has to be done, I wonder whether or not we are not thrusting too much upon you. I don't expect you to complain.

You are not that kind of a soldier, but I just want you to understand and I want the audience to understand that I don't know how we expect to get as many results as we do considering the scope of the negotiations we have now entered into.

If we start at the bottom, the least controversial matter is the Caribbean Basin legislation. There is a lot of work to be done there. We have the enforcement of the 1988 omnibus trade law and the reports that it calls for. That would keep your staff busy for most of the rest of their lives just complying with the things Congress has asked for information on.

Then we have the Uruguay round that must be completed in about 18 months. And we have Europe 1992, to say nothing of our Canadian agreement and all of those other related matters.

I am frankly worried, Madam Ambassador, when I look upon the magnitude of these negotiations, that we are spreading you and your department very, very thin.

For instance, just in tariff matters alone there is enough to keep you busy all the time. But we have in addition to agriculture, we have intellectual property, we have services—all of which are brand new fields for which there are no markers, no prior experience to help get us up to to speed.

How do you feel that we are progressing in this very broad frontal attack on all of these problems?

Ambassador HILLS. Mr. Chairman, we do have a full plate, but we have a very good team of people and we have good people not only in USTR, but in our collection of departments and agencies who are familiar with trade issues and who very frequently are tapped to give us assistance in these difficult areas.

You mentioned tariff negotiations. We have a good deal of assistance from a variety of departments.

So it is with many of our assignments. But, I cannot help but underscore the vote of confidence that you give to the individuals at USTR. They are very, very good, and I am very proud of them.

Chairman GIBBONS. I would like to have your comment on two things that recently came to my attention while I was visiting Europe. I ran into the problem of domestic content in an act related to EC-1992 entitled "Television Without Frontiers."

They are talking about television without frontiers. I am not worried about television. I think the American television people can take care of themselves. But if the Europeans adopt their proposal for television without frontiers and we do not strongly object to it, they will analogize their television without frontiers to everything else that they are doing over there.

Their television without frontiers, as you know, requires that the vast majority of it be European content. To me, nothing could be further from target than that. We have no restraint upon content in this country. It is one of our great traditions.

Our Constitution guarantees that no one shall control content. It looks like the Europeans are set upon a course of excluding American content and entering into censorship so as to prescribe what this television without frontiers is going to do in Europe.

As I say, I am not too worried about the television industry. Some of it over there is very good, like BBC, and some of it is not very good. I won't try to characterize the television in those countries I think is not very good.

But I worry about the whole principle of freedom. We are talking about free trade, the free flow of products. Certainly you can't have a free flow of products if you are going to have control of intellectual material that flows across the borders and to the public.

And I worry about how that can be analogized into everything else. If you can control ideas, if you can control content, if you can control the media, then it is just a short, short step in one's thinking to control everything else.

I wonder how you feel about that.

Ambassador HILLS. I agree with you, Mr. Chairman. We have registered a very sharp and strong objection to local content in the broadcast directive. I have talked to a number of trade ministers of the countries that make up the European Community.

We are strongly opposed. They have made arguments that the quantity of television will expand as they move toward their single market. But I think your underlying thesis of a restriction on thought and in effect censorship of fine programs that are developed in this country is simply unacceptable.

Chairman GIBBONS. Another thing that I ran into over there during my recent visit was a move on the part of some European

governments to encourage Europe 1992 to include an 80-percent domestic content on automobiles in Europe.

I told them if that happened, despite the fact that I may vote to the contrary, I was sure the Congress would retaliate on that action and that there wouldn't be any Mercedes, Austins, Jaguars, Rolls, or Fiat cars coming into this country as long as they maintained any kind of a content requirement that anywhere near approached the levels they're now discussing.

We have no such foolish restriction and we don't expect them to do that. I wonder how you feel about that.

Ambassador HILLS. Local content is a way to exclude product. We have, again, talked to the Europeans about this approach. It has not been adopted, and we are hoping that our arguments against the proposal that you mentioned will be favorably received.

Chairman GIBBONS. All right.

Mr. Downey.

Mr. DOWNEY. Thank you, Mr. Chairman.

Ambassador Hills, how would you characterize Super 301 and Special 301? Have they been useful tools to you?

Ambassador HILLS. They have provided leverage and we have had some useful results. They have also had their difficulties which we have tried to manage.

So the answer is, yes, they have been somewhat useful in some areas, and they have had their problems in others.

Mr. DOWNEY. If you were here last year when we were writing the bill, would you recommend we do something like this?

Ambassador HILLS. I would not recommend the very tight timeframes. I would have hoped that Congress could have established trade liberalization priorities with the kind of consultations that we have enjoyed, or certainly I have enjoyed with this committee and with other committees, so that it would not have been necessary to have legislated deadlines that were uniform for all countries.

Yet, I have to say that certainly in some areas the fact that there are deadlines has produced leverage. So I guess that were I to be constructive at this point, I would have wished that in this first go-around with this new legislation the deadlines had not been so rigorous, that the 30 days between the time that we identify trade barriers and the date when we are required to state what our precise trade liberalization priorities will be is simply too short.

And we had such good results in negotiations where our goals were achievable within the 30-day timeframe, that it is a shame that we couldn't have continued on and continued to have achieved further and positive results within a longer timeframe.

Mr. DOWNEY. I want to ask you a question about the sugar program. Then I would like to ask you some questions about Special 301.

You stated in your remarks just a few moments ago and the last time you were before the committee about your concern about surrendering unilaterally as you go through the Uruguay round.

Frankly, I think the sugar program is one of those things I would like to see us unilaterally surrender since there are many consumers in our country who I believe pay far more for sugar than they need to pay.

I am concerned that this strategy of the administration has changed from the last one where then Ambassador Yeutter was a strong opponent to the sugar program. Now I notice he says things, such as we want to negotiate things. I understand we are the freest trading nation in the world, and I am delighted to play something of a small role in making sure that continues to be the case.

But I don't believe that our program does us, in the case of sugar, much credit. Nor does it seem to me to make a great deal of sense to hold it off as a bargaining position for other things when it, in fact, hurts our own people.

It is somewhat reminiscent of recent arms control strategies where we built weapons that we were quite sure in the future we would have no need for and that we would eventually do away with them.

We just wasted a lot of money to get from one point to the other. I am afraid the same thing is true with the sugar program.

I would like you to elaborate on that, if you would. Is it now the policy of your office to support the sugar program pending some negotiation on other agriculture matters?

Ambassador HILLS. Well, Mr. Downey, protectionism is always hard on consumers. Neither the USTR nor this administration supports protectionism. Yet, we are in the midst of a multilateral trade negotiation, the aim of which is to reduce protectionism all around the world.

The wonderful thing is that we are a vibrant and pluralistic society. As strongly as you fuel the sugar subsidy ought to be unilaterally brought down, many of your colleagues in this body feel just as strongly that it ought not be brought down.

As a matter of trade strategy, I think perhaps it is useful to at least consider that one way effectively to bring it down is to have all nations bring down these protections which impose such a heavy burden on consumers around the world.

That is how we have chosen to address this area and many other very controversial areas.

Mr. DOWNEY. I want to ask you now about Special 301. I was intrigued at the list of nations that you developed. I would like to know whether or not you are going to be able to determine benchmarks. I understand these may be moving targets, but how we will know whether they are making substantial progress and whether or not you will be making or setting any specific standards at the beginning of the process so that we will have a yardstick to measure progress later on.

Ambassador HILLS. Our yardstick is an action plan individually tailored for each one of the nations that we have identified on our watch list. These action plans will enable us to negotiate within a framework of objectives.

For some nations, they need to pass laws to protect patent, trademark, copyright, and proprietary data. Other nations, they have the laws and they need to enforce them more effectively and with greater vigor.

In every instance, we must have an action plan. I could identify for you illustrations with respect to each of the action plans. I will be pleased to give you that in writing or I could recite a few instances.

Mr. DOWNEY. If you would respond with respect to Korea, I would be satisfied. I am specifically interested in the implementation of laws concerning trademark and copyright. I have worked with your office on this with respect to Estee Lauder and also with respect to motion picture distribution.

What I would like you to do, if you could run through some of the strategy with respect to Korea, I would appreciate that in terms of how you would determine whether or not the existing laws are being properly implemented.

Ambassador HILLS. With respect to Korea, we are very anxious that there be effective enforcement of their patent, trademark, and copyright laws and their administrative measures covered under our United States-Korea agreements.

So we will be looking at whether there is active and effective involvement of the Korea task force on intellectual priority which was earlier formed and is a Government of Korea-administered task force.

We will be looking for specific and effective actions by Korean enforcement entities so that when our entrepreneurs complain that they have filed a complaint, we will track that and see that there is effective investigation and enforcement.

We will look for concrete evidence of decreased sales of pirated and counterfeit items. We will also look for constructive participation in the multilateral international priority negotiations.

I think that is a framework within which we can feel comfortable that we will know in the next 5 months whether or not the Republic of Korea is anxious to move forward in these areas that mean so much to them, I might say, as well as to us.

Mr. DOWNEY. That sounds like a fine plan.

I want to ask you—I suspect this is going to be more in the realm of the State Department, but the President alluded to it in his speech in Texas, with respect to trade with the Soviet Union.

In specific, a potential waiver of Jackson-Vanik. Could you give us your feeling about potential for trade with the Soviets and what you would like to see the Congress do with respect to Jackson-Vanik?

Ambassador HILLS. I think the President made it quite clear that he would be willing to look at the removal of the Jackson-Vanik limitations, but that he would like to have some progress in the areas that are identified and to be certain that there was a consensus in this country that the progress was adequate.

So we are behind that thesis. We would love to see the Soviet Union move forward in the areas of liberalized immigration policy and in general human rights, liberalization.

Mr. DOWNEY. Thank you.

Thank you, Mr. Chairman.

Chairman GIBBONS. Yes, sir.

Mr. Downey, we hope to take a committee trip to that part of the world this summer and talk to those people in greater detail.

Mr. DOWNEY. It is my hope along with you and Mr. Frenzel I will be introducing legislation to do that in the next several days to support the President's effort in this regard.

It is an important step in the right direction.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Thank you very much, Mr. Chairman.

Thank you for your testimony, Madam Secretary. We have seen Super 301 much in the news. The hard decisions on defining our immediate goals, the priority practices in countries is behind us and now the work begins.

Can you review for us how that all works and what the timetable is? There is a period of discovery, a period of negotiations. Can you review that for us, please?

Ambassador HILLS. Certainly. The law requires that the USTR identify trade barriers of its trading partners. We did that when we published our National Trade Estimates Report, a book of about three-quarters of an inch thick, that analyzed trade barriers in 34 countries and two trading blocks.

That report was due at the end of April. Thirty days thereafter, Congress asked that we identify our trade liberalization priorities in terms of countries and practices.

The statutory criteria for countries was the number and pervasiveness of the barriers and the potential for increased exports from the United States or a beneficial precedent which would lead to increased export potential.

And the practices were identified as those that would have the likelihood to increase U.S. exports. We used those criteria along with a couple of others that we thought were relevant, namely, the consistency of our selection with our goals in the Uruguay round and their compatibility with our overall trade strategy of opening markets and expanding trade.

Having done that, we produced a list of six practices that were employed by three countries and notified those countries that we would like to begin discussions.

Under the statutory framework we are required to commence our investigation and our negotiations in June. June 16 I believe is our date, not June 20 because we beat our deadlines in both the publishing of the report and identification of our practices, and it runs 20 days after identification of the practices in the countries.

So we will spend a year under the statutory framework doing the investigation to determine whether there should be any designations of unfairness and negotiating to determine whether or not it is possible to bring down those barriers that we have identified.

I say 12 months. The statute talks in terms of 12 months for barriers and 18 months in the instances where there is a breach of a bilateral trade agreement or other agreement.

For the most part, the practices that we have identified would fall within the 12-month category. It is our hope that roughly a year from now we could come back and tell you that we have had constructive negotiations with our trading partners whereby they have agreed that it is in their best interest and in our best interest to move ahead in the areas that we have designated.

Happily, every area is an area that we are trying to obtain liberalization in the Uruguay round. If we obtain liberalization with a country with respect to their investment restrictions, they will have gone in the same direction that they will need to go in the negotiations that are ongoing in Geneva.

So I am hopeful that we will be able to nudge those negotiations ahead by using this 301 tool.

Mr. FRENZEL. Under the law, how long after the 12-month period do you continue to negotiate?

Ambassador HILLS. The principal negotiations occur within the 12-month period. Then the nation with which we are negotiating has 3 years to implement the liberalizations we have negotiated. Some of these changes would require time to avoid considerable economic dislocation.

Nations need some time, whether the barrier we are bringing down is in the area of agriculture or manufactured goods, to be able to phase in change. This sequence follow the tradition that we have used in our negotiations: to provide a period of time to implement the changes that are agreed to.

Mr. FRENZEL. You have been accused by some countries and some critics within this country of raging unilateralism, but it is in fact true that the next 12 months is a period of investigation and negotiation. I hope that our trading partners are looking at it in that way. It is a period of discussion rather than necessarily a period of harassment.

I assume that you are working on it in that way as well?

Ambassador HILLS. Absolutely. I couldn't agree more. I try to tell our trading partners that the only thing unilaterally we have done is to post on the bulletin board our trade liberalization priorities.

That is consistent with the openness with which our society works. They know exactly where we would like to make progress. But everything that follows thereafter is bilateral—negotiations and discussions just as always has been the case.

Our negotiations to provide liberalization and strengthening to GATT contemplates bilateral negotiation. What we want to do is to talk to our trading partners about steps that will be in our mutual best interest.

Mr. FRENZEL. If we are—well, since our goals are consistent with the GATT, our trading partners should have nothing to fear.

Ambassador HILLS. That is precisely our thesis. We hope that we can move together to bring down the barriers that prevent us from expanding multilateral trade. We need to open our markets, our markets and their markets, to have expanding multilateral trade.

Mr. FRENZEL. Thank you very much, Madam Ambassador. We wish you good luck. We think you are doing good work so far.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

Thank you, Madam Ambassador.

Regarding some of the discussion that has gone on, I wanted to commend you among other things for tying in the Super 301 process with our overall objectives in the Uruguay round.

I think you have shown to our trading partners that what we are attempting to do in the Super 301 is entirely consistent with our broader goals under the new GATT round. I think that is very commendable.

I would like to ask you about next year's Super 301 exercise. A year from now you will be required to do essentially what you did this time: review the trading practices of our various partners.

Is it safe to assume that the absence of a country from the list this year does not necessarily mean they could not be cited next year?

Ambassador HILLS. It is safe to so assume.

Mr. PEASE. All right, fine.

I would like to ask you next about structural impediments. If you could outline in a little detail what you have in mind with the structural impediments initiative with Japan, what you hope to achieve and over what timeframe, why the initiative is kept outside of the framework of Super 301 and whether you believe we have sufficient leverage to get some results without the pressure of a deadline?

Ambassador HILLS. We hope to obtain liberalization in the areas that were identified by the President, for example in Japan's distribution system, in the balance of payments, in their anticompetitive laws, so-called rules against collusion, group boycott, bid-rigging, in areas that have tended to exclude product from coming into the Japanese market.

We left that structural initiative outside of 301, fearing that the rigorous timeframe might not be conducive to constructive negotiation.

Some of these restrictions identified have been in existence for a very long period of time, and it may be overly ambitious to think that we would be able to accomplish the kind of liberalization that we would like to accomplish within a 12-month period or even an 18-month period.

We believe we do have leverage because there is no restriction on our using 301 were we to feel that that was a constructive step. On the other hand, we do think that bilateral discussions on these areas could be quite fruitful now.

We will commence those discussions forthwith.

Mr. PEASE. Would it be safe for me to assume that although you don't have a specific deadline for concluding those discussions that you would expect to see some results from them flowing at a reasonably early time even though the discussions themselves might be ongoing for quite some number of years?

Ambassador HILLS. We made that quite clear. There must be results. I think the ministers representing Japan are able people and have read our law, have read the sentiments here expressed in Congress, and are aware that we do need to see results.

Mr. PEASE. Thank you.

I would like to focus on Japan for just a moment. I mentioned earlier a chart that will be presented by the NAM in its testimony showing how resistant to change the trade surplus is that Japan runs with the United States.

The Department of Commerce is quoted by the NAM projecting that as of the moment our trade deficit with Japan for 1989 is likely to be about $53 billion, about $1 billion higher than it was in 1988.

I am concerned especially in the context of the recent appreciation of the dollar, which obviously will make United States products face greater competition in the Japanese market. We know that part of our difficulty in penetrating the Japanese market reflects specific barriers, some of which will be addressed in the Super 301 process.

We know that some of our problem rises from structural impediments which will be addressed, as we discussed. Some of them, I

suspect, result from macroeconomic factors such as the Japanese tax system which discourages consumption and the barriers to the building of new housing which might be a very substantial market.

Do you have any plans at all to discuss with the Japanese these macroeconomic factors which might well have a significant impact on overall demand in the Japanese market and thus our ability to sell there?

Ambassador HILLS. Of course, these broader economic factors will be relevant to the structural initiative which is to be chaired by the Secretaries of Treasury, State, and the USTR, so that I think that the items that you mentioned are relevant to a bilateral discussion.

It is a fact that these macroeconomic factors are primarily responsible for our trade deficit on both sides of the Pacific. It is the broader economic factors that drive our trade deficit.

Our relatively low savings rate, of course, is responsible for us having to import foreign capital to finance the level of investment we wish to make.

Having said all that, we do need to keep trade expanding so that we can have the correction of the trade deficits or surplus, as the case may be, take place in the context of economic growth rather than in the context of import contraction.

—So we really have a two-track assignment; one that deals with broader economic problems and the other that deals with the more microeconomic challenge of trade, which is primarily to keep our trade expanding in a multilateral sense, our factories humming so that our people are employed, and we can have the correction of our trade deficit take place in the context of growth.

Mr. PEASE. I think that is an excellent statement. Like you, whenever I talk about Japanese macroeconomic policy, I try to acknowledge that the United States has a substantial macroeconomic policy problem of its own in our Federal fiscal deficits, among other things, that we need to address as well.

I guess I am concerned about these large trade surpluses the Japanese have been running with us. I would like to ask you whether you think there is much progress that the recent pattern in the last 4 or 5 years, $50 billion plus deficits, is likely to change very much in the next several years?

Could you answer that first and I will have a followup.

Ambassador HILLS. I do not see this year a dramatic reduction in our trade deficit with Japan, because it is so hinged to the macroeconomic patterns in both countries. So that it is not a short-term correction.

Indeed, were it abrupt—that is, were the correction abrupt, it might have in its abruptness some very detrimental effects on our respective economies, which would tend to be contagious worldwide.

What we have to do is to follow a gradual, steady-as-you-go course, which this administration is striving for in its budget plan, and it is hoped that in our discussions with Japan and the various G–7 discussions that we can get some harmony in our overall economic coordination.

Mr. PEASE. Well, I agree with you, and I hope they do come down steadily but gradually. I guess underlying my comments is a con-

cern I have about the sustainability of large deficits with a single country over a period of time.

And my great fear is that despite negotiations that you will be conducting under Super 301 and under the structural impediments rubric, we may have deficits of $50 billion or more, say, for the next 10 years.

I wonder whether that is sustainable? Taiwan has apparently recognized and come to the conclusion that our large trade deficit with Taiwan is not sustainable over a period of time, and the Taiwanese have come up with what they call an action plan for which you alluded to, for reducing that deficit, and are making progress in reducing their bilateral trade deficit with the United States.

Are you aware of any discussion in Japan, in policymaking circles, about the Japanese working out an action plan of their own to deal with these very large continuing trade deficits between our two nations?

Ambassador HILLS. Of course, we are not privy to the policy discussions within the Government of Japan, and I suspect that in recent weeks, the government has had so many changes that it is going to need some time to address some of these issues again.

However, there was a study by the Economic Policy Agency that reports to MITI, recommending that there be some distinct liberalization, particularly in the area of distribution, and that report further recommended that there be some serious consideration to enforcing more aggressively the anticompetitive laws that are already on their books, which could make a substantial difference with respect to the competitive scene in Japan.

So, whereas I have not participated and have not personally been involved in any discussions with the Government of Japan along these lines, that economic policy analysis is available, and if Japan were to follow that report's recommendations, I think it would be constructive.

Mr. PEASE. Well, I would just urge you in your discussions with the Japanese to point to the good example of Taiwan, which is unilaterally and aggressively seeking to find ways to reduce its deficit with the United States.

Thank you very much for your testimony.

Ambassador HILLS. Thank you.

Chairman GIBBONS. Mr. Guarini.

Mr. GUARINI. Thank you, Mr. Chairman.

We thank you again, Ambassador, for the splendid work you are doing, and welcome you. The purpose of Super 301 was to reduce our level of trade, and that is really the goal and objective that we have, and have had in the past.

Now, of course, you have the structural impediments initiative which is underway, and I am just wondering whether or not Japan is very cooperative. They always seem willing to have dialog. I see very little action. I can remember having made trade missions to Japan where they would talk an issue to death, but as far as action is concerned, it is an entirely different matter.

I am just wondering how cooperative they seem to be in this sphere to date. Have you gotten any vibrations from the new government?

Ambassador HILLS. It is very early, obviously, since the a new government in Japan has only been in existence for a matter of days. And in fact, our identification of priorities under 301 has only been announced for a matter of days.

I did have some discussions in a recent meeting that I had in Europe with representatives of the Japanese Government, and I am very hopeful that we will continue our discussions, and being an undying optimist, as one must be in this business, I trust that we will have good discussions.

Mr. GUARINI. You, of course, are talking about trade deficits and when they talk about the structural problems, they can well point to the fact that our tax lawyers are inoperative as far as favoring trade is concerned.

We have a difference in capital formations, savings, et cetera. They can bring us around a long ways. Our antitrust laws are different. It seems when you start talking to them about macroeconomics, there is a lot of changes we have to make on our side of the ocean.

How did you decide on the limiting of 17 pages of, I understand, priority practices that Japan has? How did you decide on just these three items? Why are they so sectored, targeted? Sector-targeted? Is there a reason why you selected these three?

Were they symbolic or the three outstanding ones, or was it special interests or industry interests that prevailed upon you? How do we come down to semiconductors and satellites?

Ambassador HILLS. We took comments from the private sector and from Congress, the elected representatives of the private sector. We analyzed all the data that we could get our hands on, and we used the statutory criteria, looking at the potential for U.S. exports and at the pervasiveness of the barriers, the need expressed by our private sectors to bring particular barriers down, and the compatibility with our multilateral goals.

The fact that we have listed these six practices and these three countries does not mean that there are not other barriers, as you point out. We have a whole book of barriers. But we thought that these would be our first priorities, that this was just what the statute asked us to do, to identify our trade liberalization priorities for the near term, and we think, as I think has been expressed here today, that we have quite a plateful to address that could be constructive in liberalizing trade and providing greater opportunity for our entrepreneurs.

Mr. GUARINI. I hope you have the personnel to carry through the tremendous job and undertaking that you have before you. How will the special watch lists work as compared to priority lists that you have established? You have gotten different categories. And now, of course, with the structural impediments initiative, that is almost a fourth category.

I assume that you are staffed adequately to watch the tremendous amount of trade practices and items that are involved. Do you feel that the USTR under its present allotment allowances can do the kind of job necessary within the time frame?

Ambassador HILLS. I certainly hope so. We carefully identified the Special 301 area in a way to be more constructive. We had made so much progress in our negotiations with countries that pre-

ferred not to be designated as a priority country, that it occurred to us that there was no useful gain in designating any country. So we have not done so.

There is no country designated. However, we have an action plan for those countries where we are aware that they have a deficiency in their protection of intellectual property.

Mr. GUARINI. Do you have standards as to when you quantify that an item is to be taken off your priority list or watch list? Is there a measurement that you have which would be a measure stick or a benchmark as to when a product comes off the particular lists that you have established?

Ambassador HILLS. Yes, by having an action plan, we can determine full well when a country has achieved a level of protection for intellectual property. In some cases, it may be that the challenge is to pass a law. In others, it is to enforce a law.

Mr. GUARINI. But it is not linked to the trade deficit level that we have with the countries necessarily. It is how they treat us with regard to the special areas?

Ambassador HILLS. That is correct. That is correct.

Mr. GUARINI. So, we rely on the macroeconomic theory?

Ambassador HILLS. In the Special 301, it would be impossible to quantify the amount of trade that we would win or lose from granting patents more rapidly or from providing copyright protection or from enforcing the law to take the vandals off the street that stop you from distributing a motion picture film.

It is difficult to quantify that with precise terms. We want the system to work in a fair way, and we think that the countries that we are speaking with have a great deal to gain from providing this sort of protection.

Not only will they encourage creativity within their own jurisdictions, but they obviously will enhance the atmosphere for other nations to provide foreign capital, foreign investment and, in general, economic and commercial enterprise.

Mr. GUARINI. Are you satisfied with the progress we have made with regard to intellectual property? Has that area been a successful area, and are there any trouble areas that you would like to point out that we seem to be wrestling with and can't make the progress we would like to?

Ambassador HILLS. We have not achieved our objectives of having full intellectual property protection worldwide. That is an ultimate goal of our Uruguay round negotiations. But while the negotiations are ongoing, we are very anxious to take the most serious problems and address them in a bilateral fashion. That is what we have tried to do in the context of Special 301.

So, the answer to your question, are you satisfied with the progress——

Mr. GUARINI. Never completely.

Ambassador HILLS. We have barely gotten started. I can say in the 30 days since we designated our trade liberalization priorities, and we announced to the Congress our precise objectives for this year, we have achieved some remarkable progress that was at a rate that has surpassed that which we had achieved in similar periods in the past.

And so, in order to continue that progress, we decided to create the action plans within which to negotiate over the next 150 days and to work very closely with our friends to accomplish precise goals that are tailored to their needs.

Mr. GUARINI. Well, Super 301 perhaps has helped our bilateral situation with South Korea and Taiwan and is perhaps a catalyst with regard to making more headway with the Uruguay rounds.

I am wondering what our plans are when we get to the point that the Super 301 interferes with GATT and how we handle it. Do we have any program established in a policy, if a conflict does arise between legality under GATT and the Super 301, which we have implemented?

Ambassador HILLS. As you know, our trade strategy is to open markets and expand trade, and that is best done in our opinion through the multilateral negotiations. We have identified our trade liberalization priorities under Super 301 to be compatible, we believe, with the multilateral objectives that the system has set for itself in the Uruguay round.

Mr. GUARINI. Lastly, there could be a conflict, and I imagine hopefully it will not happen, but although the overall goals of the Uruguay rounds are to open up all trade, we know that we are never going to quite get to this nirvana.

I know that we will have some day a conflict between an aggressive Super 301 and the GATT as it is established, but nonetheless, I think the question answers itself.

I want to thank you gentlemen very much.

Ambassador HILLS. Thank you.

Chairman GIBBONS. Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. I appreciate the opportunity to join my colleagues, and I join them in their words of compliment. There has been a change——

Chairman GIBBONS. Let me say, we always appreciate you coming and participating. You are always instructive and helpful.

Mr. LEVIN. Thank you. There has been a change, perhaps more than you wish to acknowledge, from the previous administration. I think the jury is still very much out, whether it is going to be a change more a result of compromise than a new, clear and courageous policy.

You will be judged by the results. If the trade deficit doesn't go down very much several years from now, that will tell more than all of the testimony, all of our questions, all of the pamphlets and leaflets from wherever.

But let me ask you, in terms of the meaning of the change and the extent to which there really has been one. Let me ask you about your thinking on Super 301 and the structural impediments which have been left out of it.

You indicated that it was too tight a timetable, one of the reasons you left them out. I think you would acknowledge that if you take the categories included as they relate to Japan, they are likely a minor piece or a minority piece of whatever portion of our deficit is related somewhat significantly to unfair trade practices.

We won't get into that discussion as to what that percentage is. But I think exclusionary government procurement and standards,

and technical barriers probably represent considerably less than one-half of that area.

So you set up this two-track approach rather than one clear track, and you said there were two timetables, and also the meaning of structural impediments wasn't really clear. We maybe had less experience overall with it.

Why did you not pick out, say, construction, where we have had considerable negotiations? Or auto parts? Or an area that you and I discussed last time here, soda ash? Where we have had discussions, where there are structural impediments involved. Why did you not list structural impediments and those examples, or one or two of them, and place them within 301?

Ambassador HILLS. We picked the sectors based on the criteria I mentioned. One of which was the preference of the industry affected. And in the case of one of the industries you just mentioned, and it is difficult, because our system is so open, but they were very adamant that we not proceed for a variety of reasons, and perhaps you and I could discuss it.

But we tried to be responsive to our own U.S. industry because obviously if they preferred that we not bring cases under 301, it would not be fruitful from the statutory criteria of expanding exports.

Mr. LEVIN. OK. That is the soda ash issue. And I think maybe we should talk about it. I think in part, the industry is reflecting a fear of a retaliation without full support from the U.S. Government. It has dragged on so long. But let's leave on that area.

Ambassador HILLS. That affects some of the other areas.

Mr. LEVIN. Take the whole construction industry area or the auto parts area. Auto parts were subject to the MOSS procedure, too. The amount of money in construction is immense. The imbalance is dramatic. Any company can come in here from Japan and any other country, too, and essentially proceed without impediment. They can open their own companies. They are here now engaged in billions of dollars of activities.

Why not, since structural impediments are so much a part of this imbalance when it relates to unreciprocal procedures, list structural impediments and under it the construction industry?

Ambassador HILLS. We felt that we have a number of trade tools. In our structural initiative we obviously are going to deal with some of the problems that are identified in particular sectors. We have ongoing negotiations and we have 301.

There is no need for us to use only Super 301 when we have the 301 device as well. So, we made a decision based on the areas we thought would best respond to Super 301, which areas are subject to ongoing negotiations within existing 301 or agreements, and which areas would respond to the overall structural initiative.

Now, there is no part of it where any one of you couldn't have said, why didn't you take out this brick and put in this flower or change it around a little bit? This was our decision, and we feel it is a comprehensive approach.

I would be glad to go through it with you. We started with so many practices. We had so many meetings with so many industry groups, and as I say, it was a decision made based upon all of the

tools that we have. We feel comfortable with how we came out, and what we think we will be able to accomplish.

Mr. LEVIN. Well, I think that that is an able defense, as it always is from you, of a decision. The feelings that I have heard expressed from within that industry and generally is that there were other dynamics involved, that you picked areas which did not get at the major gist of the problem.

Supercomputers, there is an agreement also; forest products, we had a MOSS agreement. There has been the progress of a dinosaur at best in the construction area—maybe a dinosaur moves faster than that. And here was an area of construction that really gets into this whole question of structural impediments, side agreements, internal agreements, and you say you have another 301, but that hasn't worked.

You will be judged by the results. And if you pick out areas that aren't in the center, that aren't going to really move this along, you will pay the consequences. And I take it that, in part, your answer is what has been suggested earlier by you, that there is another year. And the door isn't closed to placing areas that are under this rubric, structural impediments, within Super 301 next time around.

Ambassador HILLS. Clearly there is another year and we, as I say, have talked to industry and in the area of construction there is a concern because there are other deadlines that are affected in that industry so that we think we made a choice that was quite consistent with industry groups, with which we met quite extensively.

Mr. LEVIN. I am sorry I will have to miss the auto industry testimony due to a markup but I think the imbalance there is so overwhelming that leaving it out is likely to send the message we don't care very much. And I hope no one misunderstands us on that. Let me just finish by asking you about a reference you made. I think you have moved the dialog here away from the epithets of previous years. I didn't write it fully down but you talked about "mindless"—what came after that, do you remember?

Ambassador HILLS. No.

Mr. LEVIN. Well, it wasn't mindless criticism, I think. Also, you mentioned retaliation. I just hope that there is enough collegiality between the administration and the Congress and within the Congress, and I think there is, that we have now moved past dialog by adjectives. Super 301 exists because of pressure and action by this Congress over the resistance of the administration. It was called protectionism.

Sam Gibbons was called at least inferentially, God forbid, a protectionist because of his support for this kind of effort. And we have been in the position that some of the most ardent proponents pushed for action and it is then accepted while they are still called protectionists or mindless.

There is legitimate disagreement here. There was within the administration, right? You weren't all of one mind. Well, I swore to myself I wouldn't ask you any detail of that because you are not entitled to tell us but I think the media reports were essentially correct, as was true with Malcolm Baldrige who was often one vote against 14.

Ambassador HILLS. Don't believe every media report you get.

Mr. LEVIN. I don't. But I believe some of them. And I think clearly there were some disagreements with you and the Commerce Department often pushing one position and others suggesting other perspectives. Any administration will have that difference.

Ambassador HILLS. And every committee of Congress.

Mr. LEVIN. Exactly. I would never call someone who disagreed with me on trade mindless, at least I don't think so. And I just hope very much we can proceed. We are going to keep the heat on you.

I made some comments about your action. I thought it was skillfully done. I wish you had gone further. But I respected your decision, indeed, admired your grittiness within the administration ranks and I hope we can proceed on that basis.

I think you need to understand when there is worry about this two track procedure that we are worried that it sends the wrong message. When you leave out the structural impediments and put them off to the side, it can too easily be interpreted as meaning secondary, meaning deadlines are less important, meaning that we can be talked to death as was true in the MOSS talks on autos and true in most of the construction industry.

The test is whether the bacon is brought home. There has been hardly even a tiny ounce of fat that has come home off of the bacon to the construction industry of this country. That is not fair. It is not fair to this country and to business and workers. So anyway, I think your appearance has again been most helpful and we in the committee, we in the Congress, those who are blessed to be on the Trade Committee or the full committee or otherwise, we look forward to this continued dialog.

Ambassador HILLS. Let me assure you that the fact that this particular industry is not named under Super 301 this year, does not mean that it will not be subsequently nor that a regular 301 will not be brought. There is no difference in the process of Super 301 and regular 301. Both start with an investigation and a negotiation and we always have the latter device. We have any number of trade tools that we use to seek to open markets.

And because you twice mentioned the word "mindless" I looked at my notes. What I said is we wanted to avoid mindless name calling. We would never, never call someone who sees the issue differently than do we, "mindless," because it is a very complicated area and there are many, many factors that go into a conclusion.

So it is the name calling that we would address as mindless.

Mr. LEVIN. Thank you. I agree 100 percent.

Chairman GIBBONS. All right, Miss Hills, we are just about through with our questioning of you. But let me express a personal opinion about agricultural negotiations before you go, because we look to you to lead the negotiations that we have.

Frankly, I don't think our agricultural negotiations are ever going to get past the name calling, mindless or unmindless, unless we adopt a different policy than we have. I am not just talking about the United States, I am talking about all agricultural surplus nations. The policy, as I understand it now, is if you don't buy my surplus then you are an unfair trader. And I think we have got to think far past that when we talk about agriculture, because ag-

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riculture is so different from everything else—not as an industry, but as a fact that you need 1,800 calories in your body every day. You can't expect a country to dismantle its agricultural industry no matter how inefficient it is, unless somebody begins to guarantee that those people are going to be fed everyday. You don't have to buy a Toyota every day or a pair of socks every day; or you can get along with them and stretch them out. You can do without a lot of things, but you can't do without food.

Our policy and the rest of the world's policy is if you don't buy our surpluses, then you are unfair. It is kind of like a marriage—you get married for better or worse, richer, or poorer, sickness or health, and you have a dual obligation. We have not recognized that dual obligation.

If countries dismantle their agricultural protection, they have to be able to guarantee their people that there is going to be 1,800 calories' worth of food available at a reasonable price or no greater price than other people pay for the same amount of food. I think until we begin to think our agricultural trade policy through to that point of view, that we are just engaging in name calling. I will leave you with that thought. You can comment if you want to or say goodbye.

But I will leave you with that since you are our chief trade negotiator.

Ambassador HILLS. Thank you, Mr. Chairman.

Chairman GIBBONS. I saw you smile and nod your head affirmatively as I talked.

Ambassador HILLS. Seriously, Mr. Chairman, I think we will accomplish the goals that you specify in our multi-lateral negotiations. We are trying to bring down the barriers to market access, that is correct.

But I think we will be sensitive to the needs of nations that are trying to provide food security and this is part of a holistic negotiation. We will work with a Congress that has very strong feelings with respect to agricultural policy and with the agricultural community so that as we bring down barriers that the industry can thrive.

Chairman GIBBONS. I am not just talking to you as a negotiator, I am talking to the rest of Congress and the American public. We cannot call other people unfair in the agricultural field unless we are willing to stick with them in good times and bad because of the very nature of the fact that you have got to feed your people every day, not just once a year or once every 2 two or 3 years.

You have to feed them, every day. The freedom from want of food is probably one of the most precious freedoms we enjoy.

Thank you very much for an excellent presentation today. We look forward to continuing working with you. You are our chief trade negotiator and policy maker.

Ambassador HILLS. Thank you, Mr. Chairman and members of the committee.

Chairman GIBBONS. Thank you. We will continue to go right on through. I am operating on European time today anyway.

Chairman GIBBONS. Our next panel consists of the American Electronics Association, the National Association of Manufacturers,

the U.S. Chamber of Commerce, and the International Intellectual Property Alliance.

All of your prepared statements will be submitted into the record. You may proceed as you wish. Unless you all have a batting order of your own, we will go as listed here.

Mr. Iverson.

STATEMENT OF J. RICHARD IVERSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN ELECTRONICS ASSOCIATION

Mr. IVERSON. Thank you, Mr. Chairman, it is a pleasure to be here today representing the American Electronics Association. We have 3,500 member companies, the largest high-technology association in the world, in fact. We represent the largest manufacturing segment of the economy in the United States. We represent supercomputer, semiconductors, and software and telecommunications, so there is a lot of action in the trade area with our industry. We are very happy with the way that the U.S. Trade Representative executed the 301 requirements.

They were, we thought, quite appropriately done and cleverly done and imaginatively done, using the tools that you, the Congress, have given to them. We think it is setting the stage for removing some barriers even though it many not cover everything that we all would have liked.

We are also pleased that Korea was not put on the list. We originally recommended that they be on the list and then they came in mass to visit with us and visit with the USTR and other parts of the administration, and made rapid structural changes which really made us see that it can be done. We would hope that maybe Japan, India, and Brazil could do the same things with the same kind of speed.

Our major problems in trade: we have a positive balance with the rest of the world, but negative with Japan—not negative in that we don't like them but negative in trade—and in the back of our testimony you will see a chart that summarizes the electronic trade deficit. It is not unlike the one you referred to by the National Association of Manufacturers. It also includes the exchange rate of the yen on it. In spite of what we do with regard to changing the exchange rate, our balances with Japan doesn't respond. Nor does it respond to the fact that we have moved 379 United States electronic companies into Japan and those companies are largely run by native Japanese.

So we are trying hard. It doesn't respond to that. We also have 15 trade negotiations that took place over the last 10 years and it doesn't respond to that. So it is pretty insensitive to trying hard to exchange rates and to negotiations. So I think that the ideas set forth by the president of this structural investigation, structural adjustment might be the way to get to this problem.

The key problem facing our companies, I think, over there is the attitude in buying toward always buying Japanese, whether it is the public, the industry, or the government. And in particular, the government. But generally throughout the industry and the public they buy Japanese regardless of the price. Also within industries

there are combinations of companies and they have preferential buying practices among them.

It is very hard to break in. And they have this collusive behavior that the Ambassador referred to, which our companies are not allowed to do.

And last, we will have problems with intellectual property protection. Our companies suffer seriously in Japan on the slow movement of issuing patents. Once we have patents, we have flooding surrounding that patent and pretty soon we can't even sell that product in Japan.

So I believe that addressing and solving the socioeconomic problems could dramatically increase our exports and with that, I will leave some time for the rest of the panelists and for questions.

Chairman GIBBONS. Thank you.

[The statement of J. Richard Iverson follows:]

J. Richard Iverson
President and Chief Executive Officer
American Electronics Association
Testimony before the House Ways and Means Trade Subcommittee
Washington D.C.
June 8, 1989

The American Electronics Association is pleased to have the opportunity, on behalf of its members, to submit testimony regarding the Administration's actions under the Super 301 provision of the Omnibus Trade and Competitiveness Act of 1988. The U.S. electronics industry is one of the fastest growing sectors in the U.S. economy, and AEA represents over 3500 firms in all segments of electronics, including components, computers, telecommunications, and software.

AEA believes that the Administration is to be complimented for the excellent job it has done, imaginatively using the tools designated by Congress. It has set the stage for increased foreign market access and the meaningful resolution of important trade barriers facing U.S. industry.

We also applaud the Administration's actions on Special 301, focusing intellectual property protection policy in a wide group of countries at two levels of priority. We are pleased with the November 1, 1989 review date to determine the level of progress made in each country cited. This will provide an action forcing date at which the Administration will be able to assess the policy changes made in the countries on the watch lists. Because intellectual property protection is of such vital importance to the electronics industry, we hope that the Administration will consider further action if adequate policy changes have not been made by the review date.

AEA originally nominated Japan, India, and Korea as Super 301 priority countries. However, our interest is in gaining full access to these markets, not in 301 designation. Accordingly, we are extremely pleased with the recent changes in policy that Korea has made, and feel that our concerns regarding Korea have been adequately addressed. Over the past several months, AEA has had very successful meetings with the Electronics Industry of Korea (EIAK), and we believe EIAK was instrumental in helping to effect the changes in trade policy that Korea has instituted. We look forward to a close working relationship with the EIAK.

We are particularly pleased at Korea's liberalization of investment related performance requirements and the actions taken to lift import restrictions, and liberalize standards, testing requirements, and customs procedures. AEA will of course continue to watch the implementation of these policy changes. We still have some remaining trade problems with Korea, which we will continue to work on with them. One example is the Korea's 20% tariff on semiconductors, as compared to zero duty on semiconductors in the U.S. Over time new problems may arise in the Korean market and we will hopefully solve these in the same

Korea and increase our investments in that country, and thereby test the extent of the far-reaching changes Korea has implemented.

Korea demonstrated its willingness to make major structural changes in its system in a remarkably short time frame. We are now looking to Japan, India, and Brazil to take the same type of decisive actions.

While AEA did not recommend that Brazil be nominated as a Super 301 priority country, we do recognize Brazil's wide ranging restrictions on imports and investment in the informatics area. Additionally, our members continue to be deeply concerned as to whether or not Brazil will allow U.S. software participation in the Brazilian market.

We did not recommend Brazil for a Super 301 because the U.S. has already initiated a 301 directed at Brazil's informatics practices, which we believe the Administration should continue to pursue. In addition, given the uncertain political climate in Brazil and the fact that they will have elections in November, it seems unlikely that Brazil will be able to deal with any of these issues until 1990. We believe that the situation in Brazil demands patience and hope that after the elections the U.S. and Brazil will launch a major effort to work constructively together to improve U.S.-Brazil trade relations.

We support the nomination of India as a Super 301 priority country. India has a broad based informatics policy composed of import and investment restrictions on most electronics products which is designed to protect its domestic industry. We are particularly concerned with the de facto ban on imports of microcomputers into India. The only exception to this ban is for desktop publishing systems which can be sold only to publishing and printing businesses in India. Many of India's tariffs are prohibitively high, (estimates are that sixty percent are in the 120% to 140% range). Additionally, India has stringent investment requirements, restricting foreign investment to maximum 40 percent ownership in a joint venture coupled with a pre-defined export commitment. We are looking to India to make the same type of broad-based structural changes that were agreed to by Korea.

By far our major trade problems are with Japan. U.S.-Japan trade problems are complex and not well understood. To a great extent they stem from the differing socioeconomic systems in the two countries. We applaud the President's announcement of the formation of a high level committee to propose negotiations with Japan on structural adjustment matters.

We concur with the Administration's decision not to treat structural adjustment as an unfair trade practice under the Super 301 umbrella. While Japan's system should not be regarded as an unfair trade barrier, it is clearly doing damage to U.S. industry

on bilateral investment. We believe that unless these structural problems are addressed in a comprehensive fashion, the future health of our industry is threatened, as is the very survival of the GATT trading system. It is extremely important that we work with Japan to address all these issues.

As you can see in the attached chart, our bilateral deficit with Japan in electronics trade has been steadily deteriorating, and is now over $20 billion annually. Our deficit has continued to deteriorate in spite of the huge dollar devaluation vis-a-vis the yen, as shown on the attached chart. It is noteworthy that our trade posture improved dramatically with all other countries, due to the currency changes of recent years, except Japan.

We believe it is also extremely significant that our trade balance continues to deteriorate despite the numerous trade agreements in electronics that have been entered into with Japan. Between 1979 and 1989 there have been a total of 15 agreements related to electronics trade and market access issues between the U.S. and Japan. These include agreements with NTT, a high tech agreement, an agreement on semiconductors, an understanding on communications satellites, the MOSS talks on electronics, medical equipment and telecommunications, supercomputers, and the science and technology agreement. We believe that individual agreements without a comprehensive strategy to back them up will not be successful.

One key problem facing U.S. companies in Japan is a business structure where Japanese firms in the same "keiretsu" have preferential purchasing arrangements with one another. Japanese toleration of practices that would be considered anti-competitive in the U.S., in the form of the keiretsu and government sponsorship of 252 depression and rationalization cartels, are cause for concern. We are currently evaluating the extent to which this behavior impedes U.S. exports to Japan.

Firms in the same industry also exhibit strong collusive behavior, which is not addressed by the Government of Japan. Related to this is a strong "buy national" cultural tradition which extends to Japanese Government procurement.

An example of the result of Japan's government programs and private anti-competitive behavior is the semiconductor industry, where the foreign share of Japan's semiconductor market has consistently remained at 10% despite changes in the exchange rate and greatly intensified efforts by U.S. manufacturers to penetrate the Japanese market. One reason is that huge vertically integrated firms that both produce and consume semiconductors represent a large portion of the semiconductor market in Japan. Additionally, other major users, such as the automobile industry, simply are unwilling to purchase from non-Japanese sources. For example, the U.S. supplies about 60 to 70 percent of the automotive industry's need for semiconductors outside of Japan. In Japanese auto companies worldwide, however,

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The Administration has indicated their intention to continue vigorously pressing for enforcement of the semiconductor agreement under the current 301. We strongly support this. In fact, Japan is now the world's largest market for semiconductors, and full access to that market is critical.

A very significant obstacle to U.S. sales in the Japanese market has been an inability to penetrate the government procurement market in Japan. Even in the NTT market, where we have a trade agreement, our share is only 3.75%.

Despite an 80 percent share of the world supercomputer market, U.S. manufacturers have not been able to penetrate the public sector supercomputer market. The U.S. sold its first supercomputer in the Japanese private market in 1979, and has sold 18 out of a total 150 supercomputers that have been sold in the Japanese market to date. Japan is the world's second largest supercomputer market with $1.5 billion in purchases through 1988. Forty percent of the market is publicly funded.

The Japanese Government did not procure any supercomputers until Japanese companies developed their own supercomputers. To date, no U.S. supercomputers have been sold to the Japanese Government as a result of a competitive bid. The only two purchases of U.S. supercomputers by Japanese government entities were done on a noncompetitive basis under a special, one-time only, 1987 import promotion budget. In August 1987, the U.S. and Japan negotiated the Supercomputer Procurement Agreement, which called for a transparent, nondiscriminatory, procurement process. The first formal review of the agreement in October 1988 found U.S. companies face severe obstacles; no U.S. sales have been made or are expected in the near term under the new procedures.

In 1983 the Japanese Government articulated a goal of developing a domestic satellite and associated launch service industry. The policy developed to reach this goal included a prohibition against procuring foreign satellites. In response to U.S. concerns, Japan has specified that private entities may purchase foreign satellites. Despite NTT's privatization in 1985, it is precluded from buying foreign satellites until 1992. U.S. satellite manufacturers have been able to participate in the Japanese government satellite market only as subcontractors to a Japanese manufacturer. Since satellites can often have government and nongovernment uses, one area of concern for U.S. manufacturers is Japan's definition of what constitutes a government satellite.

The U.S. electronics industry faces a wide range of other government procurement problems in the Japan. The following are three examples of procurement issues that are currently being pursued with Japan:

-- The Ministry of Post and Telecommunications (MPT) has restricted U.S. companies' share of the third-party mobile radio

systems currently and nearly twice as many additional systems for the near future.

-- In the cellular mobile radio telephone market, MPT has denied access to spectrum for services using the U.S.-type system in the Tokyo/Nagoya area, the largest market, and has allocated 33 percent less spectrum for new carriers, i.e. those using U.S.-type equipment, than for the NTT system.

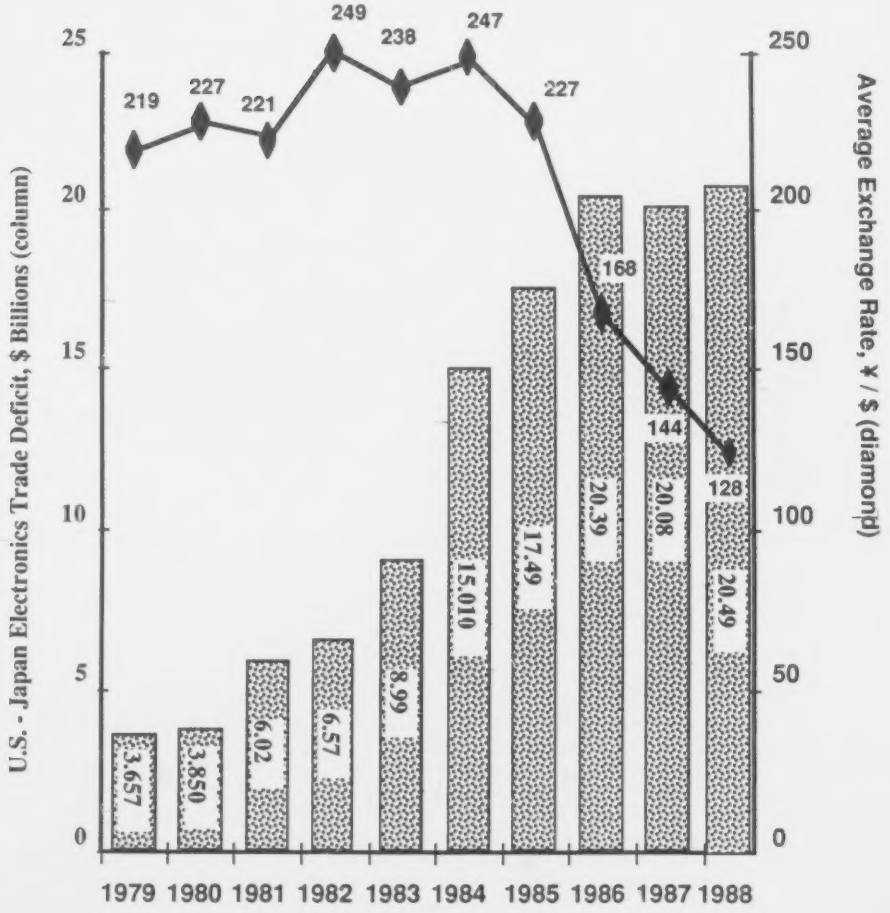
-- A problem facing U.S. telecommunications companies selling to NTT, is that the procurement cycle for certain products, such as digital switching equipment, is extremely long. The last NTT open bid for switching equipment was for rural switching equipment in 1984, and the last open bid for urban switching equipment was several years earlier. Between open bids, NTT's needs are met by the existing approved suppliers.

We are supportive of the steps that the Administration has taken to deal with these issues facing the U.S. and Japan. We believe that the U.S. and Japan need to work together to forge a new trading system. We must take the differing socioeconomic systems in each country and craft a new trading relationship that will allow each country's companies to compete equitably and fairly in each other's country.

It is important that we recognize that many of the structural adjustment problems are our own responsibility. Frankly, it is our hope that our Japanese friends will press the U.S. Government to deal with its own economic problems that impact the bilateral trading relationship. High among these problems is the high cost of capital driven by the our enormous budget deficit and our tax system which favors consumption over savings and investment. Also important is our government's insufficient emphasis on trade promotion.

AEA has established a Japan Task Force through which we will work with the U.S. Government and our Japanese colleagues to negotiate solutions to the bilateral problems that face both our countries. We hope that our effort will support the government's structural adjustment talks. We would regard the Super 301 effort a failure if it results in retaliatory or counter-retaliatory measures. We are looking forward to working with the U.S. government to negotiate creative solutions to all the Super 301 issues on the table.

U.S. - Japan Electronics Trade Deficit vs. The Yen



AEA Japan Office

STATEMENT OF HOWARD LEWIS III, VICE PRESIDENT, INTERNATIONAL ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS

Chairman GIBBONS. Mr. Lewis.

Mr. LEWIS. Thank you. I do have a written statement which I will summarize. To begin I want to state clearly that the National Association of Manufacturers believes that the administration has done a masterful job in executing the first critical phases of the Super 301 provisions of the Omnibus Trade and Competitiveness Act of 1988. Section 301 is really about trade negotiations.

The three very impressive agreements that have been achieved with the Republic of Korea in the past few months are a demonstration of this fact and the potential benefits of Super 301. Achievements which both the Congress and the administration can be proud of. Super 301 is also about U.S. trade priorities. The word appears repeatedly in the text of the trade act as if to express Congress' strong determination to see the executive branch come to grips with the need to set priorities.

The Super 301 decision of May 25 clearly establish several priorities. That a successful Uruguay round is the single most important initiative for the administration at this time. That, in bilateral terms, America's trade problems with Japan are among the most serious we face, and that addressing them effectively must be viewed as a top priority and intellectual property rights must be protected effectively and that the ability of governments to regulate investments should not become an instrument for further policies.

NAM's priority in the 301 process with Japan—More than any other country, Japan has become a symbol of our frustrations over the erosion of United States international competitiveness. The chart in our testimony which Congressman Pease has already referred to several times, comparing United States trade balances with the EC and with Japan, I think demonstrates this frustration. As you know, Mr. Chairman, since 1985, we have seen a realignment of the major currencies against the dollar. Our trade balance with the EC since then has swung from $23 billion deficit in 1986 to a positive projected surplus of around $3.5 billion this year.

A large part of this adjustment has to be attributed to the dollar realignment. Meanwhile, as our chart also dramatically illustrates, virtually nothing has happened with our trade deficit with Japan. It was at $55 billion in 1986 and the projected deficit this year will be around $53 billion. Despite a depreciation of the yen or the dollar against the yen overall of approximately 45 percent since the beginning of 1985. These numbers reenforce what virtually everyone knows.

Japan's manufacturers have challenged United States industry more profoundly than those of other countries. Further, Japan is the world's second largest economy with a GNP of roughly $3 trillion. It is already an enormous export market—$38 billion in 1988—and it has the potential of becoming a much larger one. For these reasons alone, the NAM felt it was essential that Japan be named a priority foreign country under Super 301. Not to have

named Japan would have rendered the concept of priorities all but meaningless.

We were concerned, however, that the unique opportunity presented by Super 301 would be greatly diminished if all that resulted were sectoral negotiations associated with the naming of priority practices. NAM recommended no priority practices be named. Instead it was our suggestion that the president follow the advice of section 1306 of the 1988 Trade Act and propose to the premiere of Japan a special economic summit.

We provided USTR with a list of concerns and expressed the hope that these would figure prominently in the future negotiations of Japan. We suggested that one or more of these issues could serve as the basis for a self initiated 301 case in the event that the USTR concluded such action was warranted.

The administration's decision is right on course. It did name practices but insures that the dialog with Japan will focus on the larger structural issues. We are not experts on the practices that they have chosen to highlight. Our impression is that these are good cases not only because they may result in increased exports to Japan but because they raise important questions about the overall trade relationship.

For example, we applaud the focus that the administration has put on Japan's distribution systems but we think it needs to be refined in light of an appreciation of the nature of U.S. exports. Approximately 75 percent of U.S. manufactured exports are either capital goods or industrial supplies.

We will not expand our export opportunities in this area simply by convincing Japan to do away with the large retail store law, for example. There may be merit in doing that but we also need to find a way to help American producers become permanent participants in the Japanese supplier networks.

Our guess is that these networks are the dominant factor in Japan's strikingly low propensity to engage in intra-industry trade, a phenomenon that several recent reports have underscored.

In conclusion, Mr. Chairman, we believe that the Super 301 process is working well. But the Super 301 decisions made on May 25 will be undercut if they are not part of a larger set of policies designed to address U.S. trade problems. Market access is only one element of the trade problem, and market access initiatives can only be genuinely successful if coupled with aggressive actions in other areas.

There needs to be a strong U.S. export promotion program, including a healthy EximBank and a minimum of export controls.

A system of relatively stable exchange rates needs to be maintained, one that reasonably reflects the competitiveness of the countries in the trading system.

The LDC debt problem needs to be credibly addressed. We need to look at how we have organized our government to deal with trade policy and above all we need to address our own federal budget deficit. Otherwise, we run the risk of nullifying the progress that can be achieved through implementation of the 1988 Trade Act.

Thank you, Mr. Chairman. Glad to answer any questions.

[The statement of Howard Lewis and an attachment follow:]

TESTIMONY OF

HOWARD LEWIS III
VICE PRESIDENT, INTERNATIONAL ECONOMIC AFFAIRS
NATIONAL ASSOCIATION OF MANUFACTURERS

ON

THE 1989 SUPER 301 DECISIONS

BEFORE THE

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

JUNE 8, 1989

The National Association of Manufacturers is a voluntary business association of more than 13,500 member companies and subsidiaries, large and small, located in every state. Members range in size from the very large to the more than 9,000 smaller manufacturing firms, each with fewer than 500 employees. NAM member companies employ 85 percent of all workers in manufacturing and produce more than 80 percent of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its Associations Council and the National Industrial Council.

Mr. Chairman, Members of the Subcommittee, my name is Howard Lewis, and I am Vice President for International Economic Affairs for the National Association of Manufacturers. For myself and for NAM, I want to say that we understand the importance of the issues being discussed this morning; that we appreciate the value of this hearing; and that we are very grateful for this opportunity to testify.

I want to state clearly and at the very beginning of my testimony, Mr. Chairman, that the National Association of Manufacturers believes that the Administration has done a masterful job of implementing the first critical phases of the Super 301 provisions of the Omnibus Trade and Competitiveness Act of 1988.

Section 301 is really about trade negotiations. The three very impressive agreements that have been achieved with the Republic of Korea in the last few months are a demonstration of the potential benefits of Super 301. They are achievements both the Congress and the Administration can be proud of.

More than anything else, Super 301 is about U.S. trade priorities. The word appears repeatedly in the text of the statute as if to express Congress's strong determination to see the Executive Branch come to grips with the need to set priorities. The Super 301 decisions of May 25 clearly establish several priorities. The most important of these are:

i) that a successful Uruguay Round is the single most important market-opening initiative for the Administration at this time;

ii) that in bilateral terms, America's trade problems with Japan are among the most serious we face. Addressing them effectively must be regarded as a high priority;

iii) that certain specific Japanese trade practices should be addressed under the Super 301 provisions of the Trade Act, but the larger causes of economic tension between the United States and Japan must also be addressed, and that can be done better in another framework;

iv) that new techniques and mechanisms should be established for dealing with these larger factors, referred to as structural impediments in the Administration's decisions;

v) that there are certain basic ideas about the conduct of international trade that the United States believes in and will champion, both in the context of the Uruguay Round and in other settings. One of these is the idea that intellectual property should be protected and protected effectively throughout the community of trading nations.

vi) Another is the idea that the ability of governments to regulate investment should not become an instrument for furthering beggar-thy-neighbor policies.

There is a broader point to be made as well. Prior to the Administrations's announcement, some on Capitol Hill who were involved in the drafting the Trade Act talked to us about the Administration's choices on Super 301 in terms of either a check-list or a strategy. It was pointed out that the Administration could view Super 301 as a series of boxes to be checked off, or it could see in it the opportunity to articulate a trade strategy. I think that was a fair characterization of the options Super 301 offered. NAM believes that the Administration chose the right course; they fashioned a strategy.

Background

At this point, Mr. Chairman, I would like to share with you some of the reasoning and some of the concerns which lie behind NAM's praise for the Super 301 decisions announced last month.

In candor I should point out that NAM's strong support for the Omnibus Trade and Competitiveness Act of 1988 was independent of the special new negotiation requirements it contained, requirements which we all know as Super 301.

This is not to say that Super 301 is in any way inconsistent with the Act as a whole; quite the contrary. The Omnibus Trade and Competitiveness Act all but begins with the statement that it should be "the highest priority of the United States government ... to ensure future stability in the external trade of the United States." Super 301 (Section 1302 of the Act) instructs the U.S. Trade Representative to identify certain trade liberalization priorities for the United States. These two objectives could hardly be more compatible or mutually-reinforcing.

Further, they both move toward a goal that NAM has advocated for the last several years: A Trade Surplus Through Trade Competitiveness. NAM believes that goal should guide U.S. policy, at least until it is achieved.

FOCUS ON JAPAN

On May 11, NAM offered its advice as to how we thought the Super 301 provisions of the 1988 Trade Act should be implemented. We did this in the form of a statement submitted to Ambassador Hills and shared with others in the Administration. That statement concentrated solely on Japan. This was not because we thought only one country should be named. I believe most of the company representatives who took part in our deliberations assumed that more than one country would be named a priority foreign country.

Our priority, however, was Japan. More than any other country, Japan has become a symbol of our frustration over the erosion of U.S. international competitiveness. Since 1986, the U.S. trade deficit with Japan has consistently been well in excess of $50 billion (see chart on Page 6). Those are higher deficits than we have ever run with any other country. In the first quarter of this year, the deficit with Japan accounted for more than half of the total U.S. trade deficit.

These numbers reinforce what virtually everyone knows: Japan's manufacturers have challenged American industry more profoundly than have those of any other country. Further, Japan is the world's second largest economy, with a GNP of roughly $3 trillion. It is already an enormous U.S. export market--$38 billion in 1988--and it has the potential of being a much larger one.

For these reasons alone, the NAM felt it was essential that Japan be named a priority foreign country under Super 301. Not to have named Japan would have rendered the concept of priorities all but meaningless. We were concerned, however, that the unique opportunity presented by Super 301 would be greatly diminished if all that resulted were new sectoral negotiations associated with the naming of priority practices in Japan. The 1988 Trade Act itself seems to express the same fear when it says (Section 1306 (a) (7)), "our trade and economic relations with Japan are complex and cannot be effectively resolved through narrow sector-by-sector negotiations."

Accordingly, NAM recommended that no priority practices be named. Instead, it was our suggestion that the President follow the advice of Section 1306 of the 1988 Trade Act and propose to the Prime Minister of Japan a special economic summit "for the purpose of addressing trade and economic issues." In making this recommendation, we provided USTR with a list of NAM's concerns and expressed the hope that these would figure prominently in future negotiations with Japan. (We also suggested that one or more of them could serve as the basis for a self-initiated 301 case in the event that USTR concluded such action was warranted.)

The Administration's decision is right on course. Yes, it names practices, but it also ensures that the dialogue with Japan will be focused on the larger structural issues. We are not experts on the practices they have chosen to highlight. Our impression, however, is that they are good cases, not only because they may result in increased exports to Japan, but because they raise import questions that affect the trade relationship generally. We were particularly struck, for example, by the rationale for Japan's ban on government procurement of satellites, which is quoted in the papers announcing the USTR decisions. We can understand that free trade in a particular product may well take second place to Japan's or some other country's "indigenous development objectives." But that condition begs important questions. What do these kinds of impediments to trade mean to the trading system? More important still, What are America's indigenous development objectives and how are they affected by Japan's trade policies?

STRUCTURAL IMPEDIMENTS

This is not the place, Mr. Chairman, for a full discussion of the structural issues that need to be addressed in a dialogue with Japan. There are, though, a few thoughts which we hope those involved will bear in mind as this process goes forward.

The first is a further reflection on the above graph. One of the things it shows is that we have seen a dramatic, $26 billion improvement in our trade balance with the European Community in the last three years. This year we are likely to enjoy a small surplus in our trade with the EC. Yet, in the same period, there has been at best a $3 billion blip-improvement in our trade balance with Japan. The U.S. budget deficit may have something to do with this asymmetry in the improvement in the U.S. trade account, but it is at most a partial explanation. We need to understand better the other issues.

The second point has to do with Japan's distribution systems. We applaud the focus that the Administration has put here, but we think it needs to be refined in light of an appreciation of the nature of American exports. Approximately 75 percent of U.S. manufactured exports are capital goods and industrial supplies. We will not expand our export opportunities in these areas simply by convincing Japan to do away with the large retail store law. There may be merit in doing that, but we also need to find a way to help American producers become permanent participants in Japanese supplier networks. Our guess is that these networks are the dominant factor in Japan's strikingly low propensity to engage in intra-industry trade, a phenomenon that several recent reports have underscored.

Third, in our submission to Ambassador Hills we listed "administrative guidance" in Japan as an area of concern to us. It is a tool not to be underestimated as Karel van Wolferen makes clear in his book, The Enigma of Japanese Power:

> 'Administrative guidance' is effective because of the leverage bureaucrats have over businesses. The power to withhold licences is an obvious one. Government officials are responsible for approval of applications for almost every conceivable business activity. If they do not like an applicant, for whatever reason, they can hold off a decision on that person's applications. Although there is no legal obligation for a business to abide by the guidance, all abide by it simply because they want to continue to function. ... Official theory notwithstanding, administrative guidance is compulsory.

We would suggest that, if this description is correct, there is more than one structural impediment to be discussed here.

Fourth, it is imperative that one look at the full sweep of issues--from macroeconomic policies to foreign aid to customs procedures. I shall not take up the Subcommittee's time this morning with discussions of each of these issues. I hope there will be opportunities later for us to share our views on these structural impediments. These are areas we intend to devote time and energy to in the months ahead.

Fifth, NAM still believes that a special bilateral economic summit could be extremely helpful. Handled properly, it could be the kind of action-forcing event that promotes change. A quick visit would, obviously, be meaningless. What is called for is an event that involves the legislatures and bureaucracies of both countries, that has a broad agenda, and that commands a high political priority in both countries. Such an event will take a great deal of preparatory work.

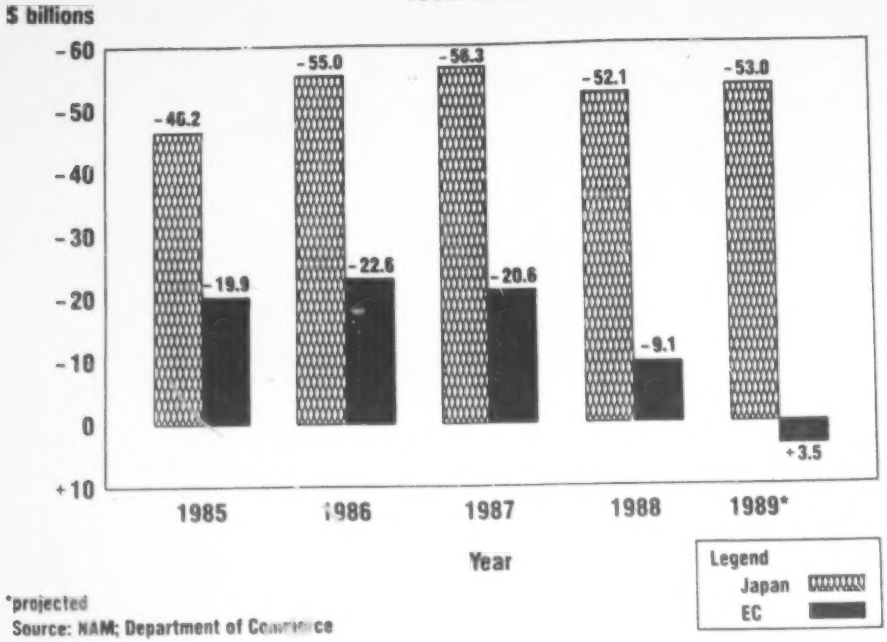
Sixth, NAM appreciates that these negotiations will have to be a dialogue if they are to be successful. We expect Japan to put pressure on the United States to bring the U.S. budget deficit down faster. We are not averse to a little Japanese pressure on this point. We seek the same result. But, it should not be the whole discussion.

CONCLUSION

As I said at the outset, Mr. Chairman, we believe that the Super 301 process is working and working well. Its importance cannot be overstated, but it can be undercut if it is not part of an array of constructive policies. Market access is only one element of the trade problem, and market access initiatives can only be genuinely successful if coupled with aggressive actions in other areas. There needs to be a strong U.S. export promotion program, including a healthy EximBank and a minimum of export controls. A system of relatively stable exchange rates needs to be maintained, one that reasonably reflect the competitiveness of the countries in the trading system. The LDC debt problem needs to be credibly addressed. And above all, changes in U.S. law and policy generally must take account of the need to promote U.S. competitiveness. Otherwise, we run the risk of nullifying in some other way the progress that can be achieved through the implementation of the 1988 Trade Act.

Thank you.

U.S. Trade Balance with Japan and the European Community 1985-1989



*projected

Source: NAM; Department of Commerce

National Association
of Manufacturers

ALEXANDER B. TROWBRIDGE
President

May 11, 1989

The Hon. Carla Anderson Hills
United States Trade Representative
Executive Office of the President
600 17th Street, N.W.
Washington, D.C. 20506

Dear Carla:

The National Association of Manufacturers is very much aware of the fact that the so-called Super 301 decisions, those required by Section 1302 of the Omnibus Trade and Competitiveness Act of 1988, must be made by the end of this month. We assume that more than one country will be named a "priority foreign country" in this context. As an association, however, NAM has in general decided not to try to offer advice as to which countries and/or practices should be named.

For a number of reasons, Japan is a special case. Certainly it is so regarded by the National Association of Manufacturers, which is why we have established a special Japan Working Group to deal with U.S.-Japan issues of concern to our members. It was this group which originally suggested the NAM recommendations on Japan and Super 301 contained in the enclosed statement. I mention this history to underscore that our recommendations with respect to Japan should not be regarded as comments about the application of Super 301 or other elements of U.S. trade law to problems in other countries.

It is, of course, our hope that you and your colleagues in the Administration will take the NAM recommendations into account in making the important decisions that the law calls upon you to make in the next three weeks. In brief, our recommendations are that Japan be named a priority foreign country, that no practices in Japan be identified as priority practices, and that the President heed the advice of Congress (Section 1306 (b) of the 1988 Trade Act) and seek a bilateral economic summit with the Prime Minister of Japan.

In our view, the naming of priority practices in Japan would pose several problems. It would not effectively address the interrelationships among the various practices. It would inevitably leave out important practices that should be considered. And, it is highly likely that it would focus the preponderance of governmental activity in U.S.-Japan economic relations over the next two years on narrow sectoral questions.

I appreciate your consideration of our views in this matter and would be pleased to discuss them with you at any time.

Sincerely,

Sandy Trowbridge

Attachment

1331 Pennsylvania Ave. NW
Suite 1500 - North Lobby
Washington, D.C. 20004-1703
(202)637-3012

NAM STATEMENT ON JAPAN AND SUPER 301

1. The National Association of Manufacturers was and is a strong supporter of the Omnibus Trade and Competitiveness Act of 1988. We attach particular importance to:

a) the emphasis in the 1988 Act on expanding U.S. exports and achieving a sustainable balance in the external accounts of the United States;

b) a successful conclusion to the Uruguay Round; and

c) the establishment of U.S. trade policy priorities and the creation and aggressive use of new tools and new ideas to eliminate the most important obstacles to the expansion of U.S. trade.

2. NAM recognizes that the unsustainable imbalance in U.S. trade is fundamentally the product of asymmetries in the macroeconomic policies of the United States, Japan, and other countries and of the slow pace of structural adjustment in the economies of our major trading partners, particularly Japan. Foreign trade policies and practices also play an important role.

3. NAM believes that U.S. trade and economic policy, both generally and with respect to Japan, should go beyond mechanical responses to legislative requirements. Rather such policy should express a comprehensive strategy. In the case of Japan, the goal of that strategy should be to significantly reduce the U.S. trade deficit with Japan in a reasonable period of time while maintaining and expanding the benefits of bilateral trade currently enjoyed by the two countries.

4. At this moment, the challenge before the Administration, the Congress, and the business community is to ensure that the 1988

Trade Act is used as wisely and as effectively as possible to achieve these goals.

5. Further, all concerned need to bear in mind that there are clear and important linkages between each of the major goals of the Act. For example, the United States is unlikely to be successful in its effort to restore stability in its external trade without squarely addressing the largest bilateral imbalance, in other words, the deficit with Japan. Similarly, the United States is unlikely to be successful in the pursuit of a positive, meaningful conclusion to the Uruguay Round if an undue proportion of political and human capital, both here and abroad, is diverted to contentious bilateral negotiations.

SUPER 301 AND TRADE RELATIONS WITH JAPAN

Priority Countries

6. Two provisions of the 1988 Act are especially pertinent to the task of determining U.S. Government priorities in opening foreign markets to increased U.S. exports. These are Section 1302, which deals with the identification of trade liberalization priorities, and Section 1306, which deals with U.S. trade and economic relations with Japan. (Both sections are attached.)

7. Section 1302 of the 1988 Act or Super 301 (Section 310 of the Trade Act of 1974) requires the U.S. Trade Representative to identify "priority foreign countries" for special action. The U.S. Trade Representative has in recent testimony reinforced the importance of the Super 301 decisions by noting that the process gives USTR an opportunity to determine where to concentrate its efforts over the next two years.

8. The law itself does not provide a great deal of guidance as to which countries should be named priority foreign countries. It does say, however, that the decision should be based on the potential

level of increased U.S. exports that would be expected to result from full implementation of existing trade agreements and on the number and pervasiveness of trade policies and practices in a particular country that restrict U.S. exports. The reference is to practices that are unreasonable, unjustifiable, or discriminatory.

9. In this context it should be noted that:

a) Japan is the world's second largest economy, with a GNP of nearly $3 trillion;

b) Japan is the second largest trading partner of the United States and is by far the trading partner with the largest potential market for new U.S. exports;

c) independent economic research demonstrates that Japan engages in significantly less intra-industry trade than other developed countries. As a consequence, it imports fewer manufactured goods than might reasonably be expected from a normally functioning market economy of its size and advanced level of development that is genuinely open to international trade;

d) The breadth and intensity of commercial competition between the United States and Japan, particular at the leading edge of advanced technology, have created serious political pressures in both countries, and the future of that competition will greatly influence economic development in both countries;

e) there is a close relationship between the structural imbalances of the two countries, such that imbalances in the United States are

exacerbated by imbalances of the opposite nature in Japan. Imbalances in the national trade accounts and the savings and investment relationships in the two countries are perhaps the best known examples; and

f) there are a large number of Japanese policies and practices, as well as characteristics inherent in the structure and operation of Japan's economy, which contribute directly to these conditions. These range from heroic efforts by both industry and government to protect Japan from the trade effects of the strengthening of the yen since 1985 to the toleration of cartels and a host of administrative practices that have the effect of discouraging imports. (An inventory of the major factors is attached.)

10. In light of the above, the NAM recommends that Japan be included among those countries designated as priority foreign countries under the Super 301 provisions of the 1988 Trade Act. Even if there were no practices that fell within the scope of Section 301 et seq., the large and unsustainable trade deficit with Japan, which is the largest component of the U.S. global deficit, would require that the U.S. bilateral economic relationship with Japan be given the highest priority for U.S. bilateral negotiations.

Priority Practices

11. There are a number of Japanese practices, both governmental and non-governmental, which should be raised in bilateral discussions between the United States and Japan. Insofar as the Super 301 negotiations can be ones in which problems rather than accusations are discussed, no legitimate issue need be omitted by reason of legalistic categories. The attached inventory of NAM

concerns is intended to suggest potentially useful areas of inquiry to U.S. and Japanese negotiators . A reading of this inventory illustrates that the areas which hold the most promise for improving the economic relationship between the two countries do not readily lend themselves to the category of actionable practices under Section 301.

12. To cite the most obvious example, a significant reduction in the U.S. budget deficit could do more than anything else to improve our economic relations with Japan. This is an important reminder that a large share of the responsibility for change rests with United States.

13. The Congress itself, in Section 1306 (a)(7) of the 1988 Trade Act makes the point that "our trade and economic relations with Japan are complex and cannot be effectively resolved through narrow sector-by-sector negotiations." Further, the naming of priority practices would pose several problems. It would not effectively address the interrelationships among the various practices; it would leave out important practices that should be considered; and it is highly likely that it would focus the preponderance of governmental activity in U.S.-Japan economic relations over the next two years on narrow sectoral questions.

14. Accordingly, the NAM recommends that no priority practices be named for Japan under Section 310 (a)(1)(A) of the Trade Act of 1974 as amended by the 1988 Act. Certainly, U.S. negotiators should remind their Japanese counterparts of the importances the United States attaches to those practices cited in the 1989 National Trade Estimate Report. It may be appropriate for USTR to self-initiate 301 cases against one or more of those practices. It is not appropriate, however, to give any practice or practices the prominence they would have if they were listed as priority practices under Super 301.

15. As stated above, NAM believes that the U.S. goal in this area should be a strategy that significantly reduces the U.S. trade deficit with Japan in a reasonable period of time while maintaining and expanding the benefits of bilateral trade currently enjoyed by the two countries.

16. In this context, the NAM wishes to call the Administration's attention to the expressed sense of Congress that the President should propose to the Japanese Prime Minister a special summit to address the trade and economic issues affecting the United States and Japan, Section 1306 (b) Public Law 100 - 418. Such a meeting could put the bilateral relationship on a new footing and bring new forces to bear on the most important economic issues confronting the two countries. In addition, it would afford an opportunity for Japan and the United States to exercise joint leadership in advancing the Uruguay Round GATT negotiations toward a meaningful conclusion.

Attachments

Approved by the NAM
International Trade
Policy Committee and the
International Investment and
Finance Committee
May 10, 1989

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U.S. - JAPAN TRADE RELATIONS

AN NAM INVENTORY OF CONCERNS

(To accompany the NAM Statement on Japan and Super 301)

1. Administrative Guidance. Every effort should be made to ensure that administrative guidance is not used to discourage imports, even in sector or product areas, such as satellites and supercomputers, where Japan is in the process of building major industries.

2. Depressed Industries. If the notion of comparative advantage has any meaning, it is that countries ought to be willing to import those products in which their own firms are not competitive. Japan's special legal provisions for 22 "structurally depressed" industries tends to nullify this essential component of an open trading system. In this context, trade distorting measures should be eliminated.

3. Intellectual Property Protection. The adequacy of Japan's protection of intellectual property rights has been challenged in two important ways. One set of problems relates to specific features of Japan's patent system, such as the length of time it takes for Japan's patent office to examine applications and issue patents. Another, potentially more serious charge, is that the system can be easily misused by Japanese nationals to effectively deny the legitimate intellectual property rights of U.S. companies. This has been done through spurious interventions designed to delay the issuance of legitimate patents and through multiple filings by Japanese firms, the primary purpose of which is to force U.S. patent holders to enter cross licensing agreements with them. Both governments should review both kinds of problems.

4. Investment Policy. On the assumption that both U.S. and Japanese companies are active in both countries, there should be review of Japanese investment policies to ensure a) that they do not operate to the disadvantage of U.S. producers with respect to their ability to operate with as much flexibility as their Japanese counterparts in both countries and b) that they are not used to achieve questionable collateral Japanese objectives, such as, access to proprietary information.

5. Japan's Customs Procedures. The Government of Japan should make every effort to ensure that Japan's custom's procedures do not present unwarranted burdens to importers.

6. Japan's Distribution Systems. There is reason to believe that the Japanese distribution systems are themselves a serious trade barrier. To the extent that these systems produce price levels dramatically different from those prevailing in the rest of the world, they have the effect of significantly reducing Japan's potential consumption of imported products.

7. Japan's High Savings Rate. Japanese macroeconomic policies should be modified to encourage more consumption, i.e., a higher living standard in Japan.

8. Japan's Tied Aid. As the world's principal provider of foreign aid, Japan should reduce the amount of aid tied to Japanese exports. Tied aid only exacerbates the serious imbalances in the trading system a) by increasing Japan's global trade surplus and b) by making it more difficult for the United States and others to sell to developing countries. This issue needs to be addressed not only in terms of Japan's stated policies but also in terms of the persistent pattern of subtle linkages between Japanese contractors and project coordinators in countries benefiting from Japanese aid.

9. Japan's Violation of Trade Agreements. The U.S. Government has already determined that Japan is not in full compliance with the 1986 Semiconductor Agreement. U.S. negotiators need to emphasize that one-hundred-percent commitment to the obligations of existing trade agreements, as well as any that may be negotiated in the future, is a sine qua non of improved trade relations both politically and economically.

10. Public Procurement. Given the large sums likely to be spent by Japan on public procurement in the coming decade, the Government of Japan should review its procedures to ensure that foreign firms have the same opportunity to bid on Japanese public procurement projects as Japanese firms and to be successful.

11. Relative Absence of Intra-Industry Trade. Further analysis should be undertaken in Japan to discover why Japan does not engage more in intra-industry trade with a view to encouraging such trade.

12. Standards & Certification. Similarly, every effort should be made to ensure that standards, testing and certification requirements are focused solely on issues such as health and safety and are not used as import barriers. Further, the United States and Japan should explore the possibility of an agreement providing for mutual recognition of national testing and certification procedures.

Approved by the NAM
International Trade
Policy Committee and the
International Investment and
Finance Committee
May 10, 1989

Chairman GIBBONS. Mr. Workman.

STATEMENT OF WILLARD A. WORKMAN, DIRECTOR, INTERNATIONAL POLICY AND PROGRAMS, U.S. CHAMBER OF COMMERCE

Mr. WORKMAN. Thank you, Mr. Chairman. I am Wally Workman from the International Policy and Programs Division of the U.S. Chamber of Commerce. In addition to my statement, I would also like to have submitted for the record the submission that the chamber made on March 24 to USTR related to Super 301 and our recommendations.

Chairman GIBBONS. We will put that in the record also.

Mr. WORKMAN. Thank you. As you know the U.S. Chamber has been a strong supporter of the trade bill. We worked very hard during the trade bill debates and we have since its passage been actively engaged in supporting the administration, carrying out the provisions of the trade bill. In our view the Congress, when it passed the trade act, sent two messages. One to our trading partners that it was no longer business as usual, that we were going to aggressively assert our legitimate rights in the world trading system and two, to this administration and future administrations, that trade and economic policy has to have a higher priority within our overall government policy making process,

As I noted earlier, our view is that, in aggressively asserting our trade rights, that is not protectionist. I am amazed that as recently as this morning we continue to see articles that maintain that one, the trade act is protectionist and two, that Super 301 is the penultimate expression of protectionism. The chamber rejects that notion and I would like to briefly outline for you the process that we have gone through in supporting the Super 301 process as well as Special 301 and telecommunications provisions of the Trade Act.

Last May, a year ago, the chamber organized a working group, a subcommittee on market access to specifically deal with Super 301. We called upon a broad spectrum of our membership. There were about 90 companies specifically involved in our analysis of trade barriers, our review of the entire system of practices across the board that culminated in our March 24 submission to USTR.

In that submission we recommended that Brazil, India, Japan, and Korea be designated as priority countries and we have listed a series of barriers that we had identified for each of the four countries.

Our emphasis then was on those barriers which were systemic, transsectorial in nature because we believed as did the framers of the Super 301 provision that these offered the best opportunities to increase U.S. exports. With those submissions, and with the actions of USTR, we endorse their naming of Brazil, India, and Japan. We also are pleased with the agreements that have been reached with Korea.

Moreover, we think that the agreements with Korea demonstrate the efficacy of the 301 process. However, we do have some reservations. We are concerned that many of the specific structurally rigid trade barriers that we had identified in our submission were not included in the administration's announcement. We hope that

these barriers will not be ignored and I was encouraged by Ambassador Hill's comments this morning in that regard.

Also, regarding the decision to hold separate discussions and negotiations with Japan on its structural rigidities, from our point of view, it is not clear to us at this point in time how those discussions will be framed and as was alluded to earlier, we are interested in what sort of timetable and what sort of deadline the discussions and negotiations hopefully would be pursued.

Nevertheless, we are prepared to actively support USTR and other government agencies in those negotiations and we would hope that the USTR will continue to consult closely with industry as they have done to date.

We have been very pleased with the cooperation and with the openness that we have had with USTR and the Super 301, the intellectual property and the telecommunications efforts. And with respect to now, what happens after we have designated the countries, we stand ready with a mechanism and with a lot of interested members to provide the technical expertise and advice hopefully that can make these negotiations come to a successful outcome.

Chairman GIBBONS. Thank you.

[The statement of Willard A. Workman and the U.S. Chamber of Commerce's submission to USTR follow:]

STATEMENT
on
MARKET ACCESS
before the
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
for the
U.S. CHAMBER OF COMMERCE
by
Willard A. Workman
June 8, 1989

I am Willard A. Workman, Director of International Policy and Programs of the U.S. Chamber of Commerce.

When Congress enacted the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Trade Act or Trade Act), it sent two overriding messages: first, to the international community, that it is no longer "business as usual" on matters of international trade policy, as the U.S. intends more aggressively to assert its legitimate trade rights; and second, to the U.S. executive branch, that trade policy must be given a higher priority in the public policy process of the U.S. government.

As you know, the U.S. Chamber is a strong supporter of the 1988 Trade Act. It disagrees with critics who maintain that the Trade Act is protectionist; rather, the Chamber sees it as Congress intended, to be aimed at opening markets, not closing them. However, the Chamber also believes that a successful trade policy must begin, rather than end, with the enactment of trade legislation. Last November, the Chamber's Board of Directors specifically recommended that the Bush Administration "vigorously enforce" the new trade law, including its "Super 301" provisions. To that end, I am pleased to report to the Subcommittee the steps that the Chamber has taken to support the implementation of the Trade Act's market access provisions.

Market Access and "Super 301"

The 1988 Trade Act contains various provisions relating to general market access issues and procedures (e.g., section 301), as well as to such specific issues as restrictions on access to foreign telecommunications and government securities markets, inadequate intellectual property protection and discriminatory government procurement. However, the most widely noted and broadly applicable features of the 1988 Trade Act are the "Super 301" provisions. These provisions are designed to combat generic or systemic practices that restrict U.S. access to foreign markets across the board.

Congress enacted the "Super 301" provisions because, under the "regular" section 301 process, the executive branch found itself embroiled in lengthy and tedious negotiations involving specific practices and sectors. The foreign country thus lacked an incentive to correct its broader, systemic trade-restriction policies. Moreover, the U.S. executive branch lacked enough resources and negotiators to address effectively the problems. For these reasons, Congress decided that U.S. trade law should seek to eliminate entire systems of trade barriers, not just individual barriers or sector-specific problems one at a time.

The Chamber strongly supports aggressive use of "Super 301" procedures to obtain trade liberalization agreements with the designated countries. We do not view "Super 301" and the other market access provisions in the 1988 Trade Act as simply a series of "hit lists." The ultimate objective of "Super 301" is not to punish other countries by erecting new barriers to their exports. Instead, as the legislative history of these provisions clearly states, Congress intended for "Super 301" to be used to open markets, not close them. Achievement of this objective will benefit not only U.S. exporters but also exporters from third nations and, indeed, consumers in restricted markets who pay higher prices as a result of trade restrictions. Moreover, "Super 301" also requires the executive branch to focus more clearly on elevating trade policy to a priority consistent with other foreign policy and national security interests.

Chamber "Super 301" Recommendations

While the U.S. Trade Representative's (USTR) National Trade Estimates (NTE) report constitutes one obvious source of information concerning the severity of foreign trade barriers and is itself based on company and other sources, the 1988 Trade Act's legislative history specifically states that "the identification of priority practices (under Super 301) is also not limited to those barriers in the NTE report. The USTR is expected to use all information readily available about foreign trade practices."[1]

To facilitate this process, the Chamber's International Policy Committee (IPC) began in May 1988, before the Trade Act was even signed, to consider how best to implement the Act. Since that time, the Chamber's Board of Directors, the IPC, and its Subcommittee on Market Access met a combined total of seven times to consider these issues. More than 90 companies, as well as various trade associations representing other companies, were involved.

The Chamber obtained information from numerous companies and trade associations with worldwide interests, and American Chambers of Commerce abroad, as well as from earlier NTE reports and other official sources. Based on these sources and its own analysis, on March 24 the Chamber recommended that the USTR designate four countries -- Japan, South Korea, Brazil and India -- as "priority" countries for investigation and negotiation under the "Super 301" provisions. This designation was based on the premise that elimination of the trade barriers in these four countries had the greatest potential to increase U.S. exports, "either directly or through the establishment of a beneficial precedent."[2] This meant consideration of two basic criteria:

1) The pervasiveness of trade barriers and distortions in a country and
2) The size of the market and the potential market opportunities arising from trade liberalization.

I ask that a copy of the Chamber's "Super 301" submission to the USTR be included in the hearing record.

In the case of Japan, whose bilateral U.S. trade is enormous, trade barriers were seen as pervasive. Although not necessarily a function of Japanese law, these barriers reflect systematic practices (e.g., restrictive distribution channels and "administrative guidance") that considerably limit imports.

Korea's barriers are as pervasive as Japan's. Moreover, they are frequently mandated in law. They include high tariffs and taxes on imports, restrictions on foreign firms' imports into Korea, discriminatory import licensing rules, forced technology licensing and transfer as a precondition to entry into the Korean market and others.

In April 1989, the American Chamber of Commerce in Korea (AmCham Korea) issued an updated report United States-Korean Trade Issues, which indicates that, if anything, Korean trade restrictions are even more severe than the Chamber's "Super 301" submission suggests.

India's market potential lies in the fact that, despite its low per capita income, it actually has a middle class that is arithmetically larger than most European countries (at least 80 million, according to some estimates), as well as the world's largest pool of scientists and engineers. The dominant economic power in South Asia, India maintains a wide range of government restrictions on imports and foreign investment, such as mandatory technology transfer, tariffs among the world's highest and a virtual

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[1] House Report 100-576, Conference Report to Accompany H.R. 3 (the Omnibus Trade and Competitiveness Act of 1988), "Joint Explanatory Statement of the Committee of Conference," page 578.

[2] Public Law 100-418, the Omnibus Trade and Competitiveness Act of 1988," section 1302(a), "Identification of Trade Liberalization Priorities."

ban (through the licensing process) on the importation of any consumer or domestically producible goods.

Brazil is the dominant market in South America and has a history of maintaining pervasive barriers to U.S. exports and investment. The new Brazilian constitution, the fundamental law of the land, further institutionalizes such restrictions as market reservation, discriminatory credit preferences to Brazilian companies and a ban on foreign company participation in mining and oil exploration contracts. Discriminatory import licensing, local content requirements and inadequate technology licensing safeguards are also problems.

Therefore, based on these criteria, the Chamber believes that elimination of these countries' barriers will establish an important precedent for U.S. business, which has long sought equal opportunity of access in these most promising future markets.

The designation of Brazil, India and Japan as unfair trading partners by the Bush Administration on May 25 under the "Super 301" provisions of the 1988 Trade Act is endorsed by the U.S. Chamber of Commerce with some reservations.

As previously noted, the Chamber had recommended on March 24 to the USTR that the Administration list the three countries named, as well as Korea. However, in negotiations the week prior to the announcement, investment and trade agreements were reached between Korea and the U.S. that could substantially open Korean markets to U.S. business -- particularly U.S. investment.

The Chamber supports the administration's decision not to include Korea on the Super 301 list. Moreover, it believes that the agreements demonstrate the efficacy of the Super 301 process in opening foreign markets.

However, the Chamber is concerned because many of the systemic, structurally rigid trade barriers that it identified in Brazil, India and Japan were not specifically included in the Administration's announcement. It hopes that those barriers will not be ignored because it is their removal that will provide the greatest opportunity for U.S. companies to obtain access to those markets. This was the intent of Congress and the objective of the Chamber in making its recommendations.

Regarding the decision to hold separate negotiations with Japan on its structural rigidities that restrict imports, it is not clear how they will be structured, or whether Japan will even engage in serious negotiations.

It is the Chamber's hope that, in conducting "Super 301" investigations and negotiations, the USTR will actively consult with U.S. businesses that may be affected by these proceedings. In particular, the Chamber strongly recommends that, for purposes of complying with the Trade Act's various consultation requirements, such as in sections 303-308 of the 1974 Trade Act as amended, the USTR specifically deem "petitioner(s)" and "interested persons" to include companies and organizations that filed submissions in response to the USTR's March 2 request for public comments on "Super 301" (Federal Register Docket No. 89-4950).

It needs to be emphasized that asserting America's legitimate trade interests is not protectionist. It is what almost all developed countries do for their companies and their interests. As the late Commerce Secretary Malcolm Baldrige once said: "If trade is not fair, then it won't be free very long; the best antidote to protectionism is to aggressively assert America's legitimate trade rights in the international market."

This concludes my testimony. I will be happy to attempt to answer any questions you may have.

99-983 0 - 89 - 3

U.S. Chamber of Commerce

1615 H Street, N.W.
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202 463-5460

International Division

March 24, 1989

The Honorable Carla A. Hills
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ambassador Hills:

Pursuant to your request for public comments (Federal Register Docket No. 89-4950) concerning identification of priority trade barriers and distortions under the so-called "Super 301" provisions of the 1988 Trade Act (section 310 of the Trade Act of 1974 as amended), and on behalf of the U.S. Chamber of Commerce, its International Policy Committee, and the Subcommittee on Market Access, I am pleased to submit the attached description of such barriers and distortions. The Chamber believes that those practices are especially significant in Brazil, India, Japan and South Korea, and warrant initiation of proceedings under section 310. The attached paper describes these practices in greater detail. In addition, we will be providing you with a "watch list" of other countries at a later date that warrant close monitoring.

The International Policy Committee and its Market Access Subcommittee have considered these issues since last summer, when we first began considering how the 1988 Trade Act should be implemented. It is our view that elimination of the trade barriers and distortions described herein would provide the greatest benefit to U.S. business in terms of its potential to increase United States exports and foreign investment, either directly or through the establishment of a beneficial precedent. The U.S. Chamber believes that the assertion of the United States' legitimate international economic and commercial interests as called for under section 310 and other provisions of U.S. law is central to our national interests, and can only serve to bolster the world's free market trading system.

The U.S. Chamber's International Division staff stands ready to assist you in your efforts to obtain negotiated trade-liberalizing agreements with the identified countries, as well as any other countries which may be so identified in the future, pursuant to the terms and timetables of section 310. Please contact me or John Howard (202-463-5464), the Subcommittee's Executive Director, if there is anyway we can be of further assistance.

Respectfully yours,

Michael Hodin, Chairman
Subcommittee on Market Access
of the
International Policy Committee

Telex: RCA 248302 (Int'l) TWX 710 822 9382 (Domestic) Cable: COCUSA

SOME OBSERVATIONS ON "SUPER 301" AND ITS LEGISLATIVE HISTORY

The so-called "super 301" provisions of the 1988 Trade Act (section 310 of the 1974 Trade Act as amended) were designed to combat generic or systemic trade practices that restrict U.S. access across the board. This is not to say that narrower, sectoral concerns may not be addressed under super 301. Nonetheless, earlier versions of the legislation, Congressional floor debate, and the legislative history of the conference report clearly indicate that the intent of the legislation was to obtain the elimination of system-wide foreign trade restrictions by going beyond such sectoral concerns:

- The original House provision (the Gephardt amendment) explicitly targeted "a pattern of unjustifiable, unreasonable or discriminatory trade policies" in high-surplus countries that harmed U.S. commerce.

- The original Senate "super 301" provision explicitly targeted "a consistent pattern of import barriers and market-distorting practices", taking into account the National Trade Estimates and the costs of the barriers to U.S. business in terms of lost exports, among other things.

- With respect to the final "super 301" language, the trade bill conferees' Joint Explanatory Statement states that:

> "the (conference agreement) change in language to priority practices and priority countries is not intended as a limitation on the scope of the original provision, and is not intended to result in the identification of only token practices and countries. The identification of priority practices is also not limited to those barriers in the NTE report. The USTR is expected to use all information readily available about foreign trade practices."

BRAZIL

PRIORITY TRADE BARRIERS AND DISTORTIONS[1]

The New Brazilian Constitution

Entering into force on October 5, 1988, and requiring the enactment of implementing legislation within 180 days of that date, the new constitution (Article 171) provides for the establishment or continuation of "protection and incentives" to develop industries deemed essential to the country's development. Such "protection and incentives" include a prohibition of foreign company participation in oil and mineral exploration contracts, and a requirement that all mining companies be majority-controlled by Brazilians.

The new constitution gives so-called "Brazilian national capital companies" ("BNCCs") certain preferences over non-BNCCs, such as easier access to long-term credit and the ability to enter into government contracts. BNCCs are defined as those in which the majority of the physical persons who control the company are Brazilian nationals.

Market Reservation

Pre-dating the new constitution but further sanctioned by it, market reservation policies constitute the general framework for governing foreign investors' access to Brazilian markets. Such policies entail the denial or closing of certain markets to foreign companies by law. Access to such markets is often denied or terminated without warning to the affected foreign company. These policies, which have been extended to a diverse array of service and high-technology sectors, actively discourage investment and even cause disinvestment by foreign companies already established in Brazil.

Application of market reservation policies has proven particularly pernicious with respect to the informatics industry, where it is estimated that, barring significant change for the better, the U.S. computer industry could lose up to $12 billion in low-end sales by 1992.

The "Law of Similars"

Just as market reservation policies govern investment, this law establishes the underpinning of Brazil's policies toward imports. It authorizes denial of import licenses if comparable products are

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[1]Various impediments to trade and investment in Brazil are discussed more fully in Improving the Economic Relationship Between Brazil and the United States, a March 1986 study. Additional information can also be obtained from The New Brazilian Constitution, published in 1988, and from USTR's 1987 National Trade Estimates report.

produced in Brazil. The law is administered through a pervasive and complex import licensing process that is applied to over 90 percent of all imports, and is subject to extensive delays. The government procurement process is also governed by the Law of Similars. While Brazil recently repealed a law which prohibited foreign companies from bidding on government contracts financed by international financial institutions, many state governments still limit access to their contracts to "national" firms.

National Content Requirements and Import Restrictions

Such requirements necessarily discriminate against foreign input providers, while forcing both Brazilian and foreign manufacturers to use inputs that do not necessarily meet optimal quality or technology standards. For example, Brazil prohibits the importation of all motor vehicles except tanks, other armored fighting vehicles and tractors.

At the same time, there are delays and restrictions on obtaining the permits necessary to import various kinds of machinery which is not sufficiently available from Brazilian sources.

Intellectual Property

The need for improved protection of the various forms of intellectual property is pervasive. There is no adequate legal recourse for halting the unauthorized appropriation of proprietary technical information. Patent working requirements are outdated; patent terms are unduly brief. Copyright and trademark protections have a number of difficulties, including lengthy application processing, and have generally been historically inadequate. No protection exists for pharmaceutical patents and mask work (semiconductor chip design) rights. Officials of the National Institute of Industrial Property ("INPI") often exercise administrative discretion to deny patent protection even where Brazilian law itself does not do so.

Technology Transfer and Licensing

Under INPI regulations, if technology is considered "know-how", then licensing agreements cannot exceed five years, at the end of which such know-how can be used by the licensee free of charge. If transferred technology is patented legally in Brazil (within Paris convention rules), then agreements can be renewed after five years, up to the period of the patent's validity. Confidentiality in the entire process is a problem.

INDIA

PRIORITY TRADE BARRIERS AND DISTORTIONS

Intellectual Property

The 1970 Indian Patents Act significantly weakened patent rights in India. Patent terms are exceptionally short (14 years from the date of filing). Product patent protection is generally unavailable in many chemical arts areas. Licensing of patents is often compulsory simply at the request of a voluntary license holder or pursuant to the order of the Controller of Patents; in effect this amounts to an expropriation of patent rights. Similarly, licenses of right can be secured merely on request at any time after expiry of 3 years from the date of patent grant.

India also maintains severe restrictions on the licensing of foreign trademarks to Indian users. As a matter of general policy, the Indian government introduces, in the letters of approval for foreign collaboration, a condition to the effect that the use of a foreign-owned trademark will not be permitted in relation to goods for sale in the domestic Indian market. Trademark registration is vulnerable to cancellation for non-use; defense against such cancellation is available in Indian courts, but is difficult. India has no formal recognition of internationally famous trademarks. Service marks are not formally protectible under Indian law. There are restrictions against registration and usage of trademarks in respect to certain single active ingredient pharmaceuticals. The trademark registration period takes up to four years, and it is often difficult to obtain up-to-date trademark search information.

Technology Transfer Licensing Procedures

India requires (U.S.) licensors to indemnify (Indian) licensees against worldwide infringement of third-party patents. This constitutes a prohibitive obstacle to the voluntary transfer of sophisticated technology to India. On the other hand, the Indian government often requires that technology be transferred to a local firm as a condition of foreign investments or joint-venture approvals.

The Indian government imposes limits on licensing fees, maximum royalty bearing production levels, and the length of time royalties may be paid. Prohibitions on minimum license fees apply, as they also do against the payment of patent royalties in the period after the expiration of the license agreement, and interest charges for late payments.

India mandates deductions from the royalty base, and of Indian taxes (other than income taxes) from payments made to the licensor.

Investment

Government approval is required for all foreign investment on a case-by-case basis, resulting in significant bureaucratic delays. In addition, a foreign company is restricted to 40% equity if it is to be treated as a domestic company. Export performance and technology transfer requirements are often imposed as a condition for approval of foreign investment.

Tariffs

India's tariffs are among the highest in the world. It is estimated that 60% of India's tariffs fall between 120-140%.

Import Licensing

India restricts imports of consumer goods and most goods that can be produced domestically. This is India's most prominent trade barrier, although there has been some improvement with respect to high technology.

Restrictions on Local Agent Contacts with the Indian Government

Due to a scandal involving the Ministry of Defense and a foreign company, foreign companies can no longer use local agents to sell to the Ministry of Defense. Since most U.S. companies do not have local offices, this poses a disproportionately large burden on the very companies that are least likely to offer illegal "facilitative" payments: U.S. companies, whose conduct is so proscribed under the Foreign Corrupt Practices Act.

Services Barriers

Foreign participation in Indian financial services markets is sharply limited in both functional and geographic terms. In some cases, foreign participation is prohibited outright.

Local Content

India's "Phased Manufacturing Program" entails local content requirements over time. Although it does not affect all companies, it is a deterrent to many potential investors and imposes tremendous costs to companies that are subject to these requirements.

JAPAN

PRIORITY TRADE BARRIERS AND DISTORTIONS[1]

Targeting

The Japanese government's full range of practices involving administrative guidance, public procurement and restrictive business practices (discussed below in greater detail) constitutes a significant and actionable policy of targetting, with adverse implications for a wide range of U.S. industries.

Administrative Guidance

Japanese government officials offer commercial "suggestions" and "advice" to businesses and public organizations over whom they have regulatory jurisdiction. Such officials possess broad authority to provide or deny loans, grants, subsidies, licenses, tax breaks, government contracts, permission to import, and approval of cartel arrangements. As a result, their suggestions and advice include implied threats to deny such benefits and/or impose new restrictions if certain arrangements are not agreed to by the business or public organization.

Such guidance has been effective in limiting the importation of refined pretroleum products, as well as automobiles, steel, cotton and high technology products.

Public Procurement

Japanese government public procurement practices exclude foreign bidders through reliance on single tenders, short bid times, complex qualification procedures, and a general lack of transparency. Such exclusion has also been accomplished by setting work experience as a selection criterion. Since foreign contractors' work experience in Japan has been limited, this criterion effectively excludes most foreign competition.

Restrictive Business Practices and Distribution Channels

The Japanese government tolerates a variety of complex and systematic anti-competitive activities which allow Japanese companies to collude and which discriminate against foreign-made goods. Such activities would constitute anti-trust violations in the United States. For example, it is virtually impossible for a foreign company to sell in

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[1] A more detailed discussion of many of these, and other, Japanese trade barriers and distortions can be found in Analysis of the U.S.-Japan Trade Problem, issued in February 1989 by the Advisory Committee for Trade Policy and Negotiations.

Japan without having an affiliated (Japanese) company doing the marketing and distribution. The result is an inordinately complex distribution network which causes the import to become very expensive by the time it reaches the consumer.

Vertical distribution chains in various industries limit imports by operating on the basis of long-term contracts, with rebates provided by the manufacturer to ensure the loyalty of wholesalers and retailers. In cases where Japanese importers and distributors belong to the same group ("keiretsu"), they will favor purchases from within the group, or from another Japanese group, over foreign imports.

Customs Administration

Japanese customs officials are known for their exacting interpretation of customs regulations. Regardless of their intentions, these interpretations have had the effect of restricting trade. For example, imports can be blocked, and complaints by foreigners can be delayed, until a "competent" Japanese importer has been identified. This gives the Japanese government total control over the level of imports, thus sharply limiting foreign companies' right to complain to the Japanese government over market access problems.

Japanese import licenses restrain trade. They are granted for a limited period of three to seven years, after which the application period must start over again. Moreover, the permits are given to Japanese importers, rather than the foreign exporter. This limits the exporter's ability to use his own marketing skills to gain market penetration or to switch importers if he is unsatisfied.

Standards, Testing, Certification and Regulatory Requirements

Discrimination against foreigners in the application of standards arises from (1) the exclusion of foreigners from the standard-making process; (2) insufficient notice provided to foreigners of changes in standards; and (3) the basing of standards on design, rather than performance criteria. Moreover, the lack of transparency, bureaucratic delays, and biases favoring domestic companies present significant obstacles to U.S. companies.

Imports have not had access to the so-called factory registration and model approach for self-certification that Japanese producers use. Instead, imports have generally been subject to a time-consuming "lot testing" system.

While preferential handling is given to auto manufacturers, the 1,000 vehicle-per-model limit on such handling amounts to a de facto quota, since a complex "homologation" (standards adherence) process applies to all vehicles over that limit.

Inadequate Intellectual Property Protection

The Japanese Patent Office ("JPO") takes six years to issue a patent, compared to two in the United States. Once the patent application has been filed in Japan, it is vulnerable to the unauthorized use of the patent by competing firms. Since the term of patent protection is 20 years, only for 14 of those years does the patent holder enjoy exclusive rights.

The delays in the issuance of patents in Japan arise from two principal factors: (1) understaffing of the JPO, which in 1986 received 609 applications per examiner (compared to 94 in the U.S.), and (2) continued reliance on pre-grant opposition proceedings which have been abandoned in Europe on the grounds that they have been abused by competitors to delay the issuance of the patent.

Trade Agreement Violations

Japan's continuing failure to implement effectively certain market-oriented sector-specific ("MOSS") agreements to which they are parties constitutes an actionable violation of trade agreements.

KOREA

PRIORITY TRADE BARRIERS AND DISTORTIONS[1]

Restrictions of Foreign Invested Firms' Imports of Related Products

Foreign firms with manufacturing operations in Korea may market only those products that they manufacture or add value locally (a de facto 10% local content requirement exists). Raw materials and equipment necessary for local production may be imported. However, completed product lines are excluded from importation.

Taxation and Restriction of Imports

Broad tariff reduction programs notwithstanding, Korean tariffs on finished products remain in the 30-50% range. Moreover, some luxury items (e.g., foreign-made cars) are subject to a combination of duties, "defense taxes", and consumption taxes totalling approximately 130% of the C.I.F. price.

The system of computing total taxes on imported goods, which includes cumulative application of the various levies, increases their cost by more than the published duty might suggest. For example, 2.5% of a product's dutiable value might be levied as a defense tax, with an additional 10% of the total of the dutiable value and the actual duty might be levied as a value-added tax, in addition to the duty.

Volume quotas, and in some instances embargoes, are applied to some articles of trade. Such quotas are sometimes determined as a percent of the Korean production of a competing article.

Restrictions on Trade Activities

Notwithstanding the announced intention of the Korean Ministry of Trade and Industry to permit the free importation and distribution of products by foreign-invested companies, only licensed traders are authorized to import products for their own account. The criteria upon which issuance of licenses is based, and the scope of the activity allowed under the licenses, are more restrictive for foreign companies than for Korean companies.

In addition, unlike Korean companies, foreign non-manufacturing importers may only import products actually produced by parent and affiliated companies.

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[1]Many of these, as well as other, Korean trade barriers and distortions are discussed more fully in United States-Korean Trade Issues, published in July 1988 by the American Chamber of Commerce in Korea.

The government also limits the availability of foreign exchange to purchase imports.

"Unnecessary and Luxurious" Imports

In concert with government-sponsored TV campaigns against such imports (beginning in 1985), the Association of Foreign Trade Agents of Korea ("AFTAK") sent letters to members advising them not to purchase such imports. Importers who fail to heed this advice risk expulsion from AFTAK, and a resultant loss of their business. Foreign exchange banks are also provided with lists of these imports; they give "guidance" to firms as to whether the import to be financed is on the list.

Moreover, despite a 1987 announcement that the list would be liberalized, and an apparent reduction in the number of cases of government intimidation, fears of harassment in the forms of tax audits and other methods persist.

Customs Administration

Customs officials have wide latitude to restrict or block imports within the context of Korean government exhortations to "conserve foreign exchange for national prosperity." Actions may include anything from minor time delays to the imposition of heavy duties and other charges on imports of little or no significant commercial value. In addition, unwritten and informal "guidelines" often have the effect of undercutting the value of written Customs regulations and policies.

Almost all foods are subject to quarantine approval and/or other clearance procedures from the Ministry of Health and Social Affairs.

Forced Licensing and Technology Transfer

The Korean government requires technology licensing and transfer as a precondition to entry into the Korean market, and usually insists on designating the local licensee.

Prohibition of Foreign Ownership and Participation

Korean law and government practice virtually ensures that a foreign-owned enterprise will never have the opportunity to wholesale a wide variety of foods, beverages, drugs, cosmetics, publications and other products. In general, foreign companies, even those with manufacturing investments in Korea, must market their products through Korean companies. In addition, foreign ownership and participation are prohibited in certain service industies.

Intellectual Property

Substantial progress was made in 1987 on correcting a number of serious deficiencies in the Korean intellectual property laws. However, much work and follow-up needs to be done before U.S. companies in Korea will enjoy the full benefits of the protection promised under the Agreement between the U.S. and Korea arising out of the section 301 settlement. The need for further work extends to all areas of intellectual property law, including patents, trademarks, copyrights (including protection of computer software), trade secrets, and semiconductor design protection.

Chairman GIBBONS. Mr. Smith.

STATEMENT OF ERIC H. SMITH, GENERAL COUNSEL, INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

Mr. SMITH. Thank you. I welcome the opportunity to appear before you this morning to present the views of the International Intellectual Property Alliance on the new Special 301 mechanism.

The Alliance consists of seven trade associations cutting across the copyright community: Motion pictures, music and records, books and computer software. These associations joined together in 1984 to take on a fight that then seemed almost impossible to win—the fight against international theft of U.S. intellectual property.

Our members are trade associations representing over 1,600 companies—companies that rely on copyright protection—which together account for over 5 percent of the U.S. GNP. The Alliance members are: ADAPSO, the American Film Marketing Association [AFMA], the Association of American Publishers [AAP], the Computer and Business Equipment Manufacturers Association [CBEMA], the Motion Picture Association of America [MPAA], the National Music Publishers' Association [NMPA], and the Recording Industry Association of America [RIAA]. Together, Alliance members generated an estimated trade surplus in 1988 of almost $13 billion.

Frankly, at first Alliance members were initially reluctant to support the administration's decision on May 25 not to designate any countries under the new "Special 301" mechanism. However, after extensive consultations with Ambassador Hills and her staff, we became convinced that the administration can use the next 5 months until November 1 very creatively to concentrate administration attention and resources on solving the problems we identified. We were very concerned, of course, that the "priority watch list" and "watch list" decision might be read by these target countries as evidencing a lack of commitment on the part of the administration in using U.S. leverage to open these foreign markets by eliminating piracy and other barriers. However, we are now convinced that Ambassador Hills is firmly committed to sending a clear and strong message that these "priority watch countries" must make significant progress during this period to eliminate these barriers or they will face certain designation on November 1.

The most critical portion of Ambassador Hill's approach is the development of specific and detailed "action plans" which will form the basis of the administration's negotiating position with each of these countries. While we are convinced that she and her staff will work closely with the Alliance in developing these detailed "action plans" to provide the maximum leverage to open foreign markets to our copyrighted works, the ultimate success of the negotiations to come in the next 5 months will depend on these countries' certain knowledge that the United States will be unwavering in its commitment to eliminate the theft of U.S. copyrights which these governments directly or indirectly condone. We have received these assurances from Ambassador Hills and we look forward to the next few months of intense discussions and ultimate results.

Next week, United States negotiating teams will leave for Korea and Taiwan to open bilateral talks on resolving the remaining impediments to eliminating copyright piracy in these countries. Three years ago we reported to this committee inadequacies in the laws of these countries. Today most of these problems have been rectified. What we now face is a frustrating reluctance on the part of these governments to enforce their new laws. The result has been that the pirates continue to ply their trade and these governments have simply not imposed the heavy fines and jail terms that alone will send the message that piracy is a criminal act and must end. We believe that USTR knows what must be done to remedy this problem and our expectation is that by November 1 concrete results can be achieved.

As Ambassador Hills has told you, there has been considerable progress to date—but the job is by no means done. We believe that USTR's record to date conclusively demonstrates that the "Special 301" mechanism you fashioned is achieving the results you intended.

Thank you very much, Mr. Chairman.

Chairman GIBBONS. Thank you very much, Mr. Smith.

[The statement of Eric H. Smith follows:]

STATEMENT OF ERIC H. SMITH, GENERAL COUNSEL
INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

Mr. Chairman and Members of the Committee, I welcome the opportunity to appear before you this morning to present the views of the International Intellectual Property Alliance on the recent actions of the United States Trade Representative in implementing the new "Special 301" mechanism created by the Omnibus Trade and Competitiveness Act of 1988. My name is Eric Smith and I am General Counsel of the Alliance.

The Alliance consists of seven trade associations cutting across the copyright community: motion pictures, music and records, books and computer software. These associations joined together in 1984 to take on a fight that then seemed almost impossible to win -- the fight against international theft of U.S. intellectual property.

Our members are trade associations representing over 1600 companies -- companies that rely on copyright protection -- which together account for over 5% of the U.S. GNP. The Alliance members are : ADAPSO: The Computer Software and Services Industry Association (ADAPSO), the American Film Marketing Association (AFMA), the Association of American Publishers (AAP), the Computer and Business Equipment Manufacturers Associations (CBEMA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA) and the Recording Industry Association of America (RIAA). Together, Alliance members generated an estimated trade surplus in 1988 of $13 billion.

On May 25, 1989, Ambassador Hills announced the Administration's actions under the "Special 301" provisions of the 1988 Trade Act. After passage of the Act in 1988, the Alliance worked closely with the Office of the U.S. Trade Representative to provide our collective views on the state of copyright piracy and market access restrictions worldwide. On February 6, 1989 we initially identified twelve countries with inadequate statutory, administrative and/or enforcement regimes where such inadequacies led to significant losses to our industries. On April 19, we supplemented this initial survey with a comprehensive report entitled "Trade Losses Due to Piracy and Other Market Access Barriers Affecting the U.S. Copyright Industries" -- which we have provided to Subcommittee members -- and which quantified trade losses due to piracy and market access restrictions in these countries and set out the statutory, administrative and enforcement inadequacies which contributed to these losses. The report also set forth our specific recommendations to U.S. negotiators on what changes needed to be made to reduce and eventually eliminate these losses. The report strongly recommended that if significant progress is not forthcoming from these countries, they should all be eligible for designation under Section 1303 of the 1988 Trade Act amendments (Section 182 of the Trade Act of 1974).

Alliance members were initially reluctant to support the Administration's decision on May 25 not to designate any countries under the new "Special 301" mechanism. However, after extensive consultations with Ambassador Hills and her staff, we became convinced that the Administration can use the next five months until November 1 very creatively to concentrate Administration attention and resources on solving the problems we identified. We were very concerned, of course, that the

"priority watch list" and "watch list" decision might be read by these target countries as evidencing a lack of commitment on the part of the Administration in using U.S. leverage to open these foreign markets by eliminating piracy and other barriers. However, we are now convinced that Ambassador Hills is committed to sending a clear and strong message that these "priority watch countries" must make significant progress during this period to eliminate these barriers or they will face certain designation on November 1.

The most critical portion of Ambassador Hill's scheme is the development of specific and detailed "action plans" which will form the basis of the Administration's negotiating position with each of these countries. While we are convinced that she and her staff will work closely with the Alliance in developing these detailed "action plans" to provide the maximum leverage to open foreign markets to our copyrighted works, the ultimate success of the negotiations to come in the next five months will depend on these countries' certain knowledge that the U.S. will be unwavering in its commitment to eliminate the theft of U.S. copyrights which these governments directly or indirectly condone. We have received these assurances from Ambassador Hills and we look forward to the next few months of intense discussions and ultimate results.

The Administration has included eleven of the twelve countries we identified in our April report on the total twenty-five country "watch list" and seven of the eight "priority watch list" countries are Alliance-identified "problem" countries. Included are the countries that have caused the copyright industries the largest losses, the People's Republic of China, with estimated annual losses of over $400 million, Saudi Arabia, with losses of $189 million, South Korea, with losses of $135 million, India, with losses of $123 million and Taiwan with losses of $90 million. Also included are Brazil and Thailand, where losses are somewhat smaller, but which have continued to resist making improvements in their regimes of protection. We have attached a Table from our report which sets out total estimated losses to our industries of about $1.4 billion in these countries (except Nigeria).

Next week, U.S. negotiating teams will leave for Korea and Taiwan to open bilateral talks on resolving the remaining impediments to eliminating copyright piracy in these countries. Three years ago we reported to you major inadequacies in the laws of these countries. Today most of these problems have been rectified. What we now face is a frustrating reluctance on the part of these governments to enforce their new laws. The result has been that the pirates continue to ply their trade and these governments have simply not imposed the heavy fines and jail terms that alone will send the message that piracy is a criminal act and must end. We believe that USTR knows what must be done to remedy this problem and our expectation is that by November 1 concrete results can be achieved.

As Ambassador Hills has told you, there has been considerable progress to date -- but the job is by no means done. We believe that USTR's record to date conclusively demonstrates that the "Special 301" mechanism you fashioned is achieving the results you intended.

Mr. Chairman, with the Committee's help through regular oversight, we believe the Administration has the tools to make major strides in eliminating piracy and other market access barriers. Already important improvements have been made. If the Administration is fully prepared to use those tools -- and so far we believe it is -- including underlying trade sanctions, if that should unfortunately become necessary -- then we can confidently say that we can look forward to these markets opening to trade with our member companies.

Mr. Chairman, we commend this Committee for its unswerving support in maintaining and enhancing one of this country's most valuable trade assets, its copyright industries.

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Chairman GIBBONS. Mr. Smith, has your organization been actively concerned with what is going on over in Europe right now on thought content?

Mr. SMITH. We have indirectly. The way the Alliance functions is we tend to focus on issues that cut across our industry collectively.

The content issue has tended to be an issue that has faced principally the Motion Picture Association of America, and while all alliance members are very concerned with market access barriers, it has not been our organization specifically that has focused on that issue. But the answer is yes, these are the kind of market access restrictions which the Special 301 mechanism ultimately was crafted to deal with.

Chairman GIBBONS. What concerns me is that under the guise of creating television without barriers, they are going to create television with censorship over there by the content rule. Something that is so foreign to the American way of thought, something that we have no parallel to, and I hope we never will have any parallel to in our society.

The fact that they can acknowledge that, once they get that point across, means that they can analogize it all across the trade specter.

You have to have European culture in all of your trade. That to me would be a disaster that we would spend generations trying to untie. While I know so far they are only aiming at intellectual property, it is easy to go over into everything else after you have knocked that off.

I am concerned, very frankly. The European Commission has approached this directive saying that a majority of the television transmission over there must be of European content. It has passed the European Parliament and is being lobbied very heavily by the special interests in Europe. All it has to go by now is the Council of Ministers, and then it is law.

Mr. SMITH. This is simply protectionism under the guise of cultural sovereignty. It is a real danger throughout the world.

Chairman GIBBONS. It is a danger that says your intellectuals are not very intellectual, that your artists are not very artistic. It is a terrible admission, but it is one that is contagious. It is like the smallpox used to be or AIDS is now. There is no vaccination for it.

So I hope your organization as well as our government will move vigorously in that area. To show you how contagious it is they have already spread it into automobiles—80 percent domestic content on that would bring on a retaliation that would be disastrous. So I think we have a problem developing over there that I think the private sector and the public sector will have to pay attention to.

Mr. Lewis and Mr. Iverson, what you pointed out here about the difference between Japan and Europe has long puzzled me. I guess though you really don't understand the difference until you visit the homes of Japanese and the homes of the Europeans.

The European homes are full of consumer goods. They are like us. They have them running out of the ears over there. You go to the Japanese home and there are just no consumer goods in the place. A high-technology home is one with a light bulb hanging from the ceiling and a hot plate to take the place of a habachi

stove when you are in a hurry in the morning. But other than that, there is just nothing else in the Japanese home.

Maybe a television set, one for the whole house where we have one for everybody in the house and a couple left over. And the same thing with everything else around the house.

So while we hack away at their barriers, it is really their life style that is thwarting us. Their barriers are horrible enough, but if their life style continues, they will be the richest poor people in the world. They will have all of the IOU's of the westerners and none of the comforts of the rest of the world.

That causes discomfort here. It causes discomfort there. So it is a very complex problem. If you would like to elaborate on that, I would welcome your comments.

Mr. IVERSON. They are oriented toward industry and toward domination of markets, where we are oriented toward the satisfaction of our consumers.

They are relentless in their pursuit of market share. We are relentless in our pursuit of quarterly earnings.

Chairman GIBBONS. Aren't they giving us a bunch of paper IOU's?

Mr. IVERSON. They own a lot of buildings here, and a lot of companies here, in an increasing number. Those are certainly hard assets here, and in Europe and in Spain.

Chairman GIBBONS. I agree, but they can't move the assets out. They are not any use to them unless they make a profit on them.

They are not profitable unless they are attractive. That means they are going to have to plow capital into them, they employ all Americans.

It looks like to me that, perhaps, while they don't understand it, they are doing us a heck of a big favor with their lifestyle pattern, which is to sacrifice on the home front and build up a lot of paper assets around the world, which are not going to be worth the paper they are written on if they ever pay us back.

Mr. IVERSON. You would think with the Japanese visiting us and seeing our quality of life, pretty soon they will rebel against the system.

Chairman GIBBONS. I hope they do before it is too late. I wouldn't want to see the problems in Japan like we do in other places on earth.

I don't know who sold them the bill of goods that they have got to work like they do and live like they do.

Mr. LEWIS. Mr. Chairman, one thing that your question, I think, points out is one of the basic problems of the whole post-World War II international economic system; namely, the responsibility of the surplus country in correcting imbalance, international trade and finance.

If you leave it all up to the deficit nations, it is going to make, No. 1, the job certainly very hard for the deficit nations to get itself out of the ditch.

Two, it may be impossible for the deficit nations to do that, especially if the surplus country are not taking any actions to make it any easier.

I think that the nature of your question raises that and it also points out the value that the administration, or the value of the

administration's approach in raising some of these structural issues as well as the macroeconomic issues. We can't do it all simply with trade barriers.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you very much.

Thanks to our witnesses as well.

All four of you gentlemen represent organizations with very significant memberships.

What do your organizations do to encourage American companies to get into exporting?

I find in my congressional district, I have a terrible time getting American companies to even think about exporting any place at all.

It seems to me, that with your membership broadly across the United States, and in the case of the chamber of commerce with your affiliates overseas, that you ought to be able to do a lot.

Do you have, within your own organizations, procedures for encouraging that sort of thing?

Mr. IVERSON. Let me start first again.

The American Electronics Association does have a very strong program to promote exporting by our companies. I can't say it has been overwhelmingly successful, because the smaller companies see such a big market inside the United States, it is hard to get them to go overseas. But it is getting better and better.

As I mentioned earlier, we have 379 companies that have expanded into Japan. That is a phenomenal number.

They have gone over there hoping markets are going to open up. We had a 50-percent increase in Japanese sales last year.

It went from $5 to $6 something billion. The Japanese, unfortunately, increased theirs by an equal amount. Nevertheless, we had a dramatic increase.

We have an office over there with two Americans that speak perfect Japanese, supporting the industry. We had to form our own pension fund because the companies are too small for the Japanese Government to permit them to have adequate pensions. They have a hard time recruiting, so we do joint recruiting for them. We have a recruiting brochure. We are helping our companies in Japan find them in nationals to populate their companies.

I think we are going to do the same thing in Europe. American companies have a better understanding of the European situation, and are there in larger numbers.

We are trying to get more and more of them. I would guess out of our 3,500 member companies less than 1,000 export.

Mr. PEASE. Thank you.

Mr. LEWIS. NAM is primarily an organization that works on policy.

What we do in export promotion area, primarily comes through the fact that we have about 150 vertical trade associations representing various industrial sectors. These are the organizations—at least industry and the manufacturing community—that are primarily involved with the trade promotion.

They can concentrate much more effectively on their one particular industry than a broad organization like NAM.

Mr. WORKMAN. At the U.S. Chamber, I wear two hats, director of international policy and director of international programs.

On the program side, the chamber has been heavily involved not only here, but also in the 60 American chambers located in 54 countries around the world, in promoting the idea of exports in trade in general.

Within the United States the approach that we take is we define a specific issue that we think is going to be of interest to American businessmen and identify or promote certain interest in it.

A case in point is what we are doing on EC-1992. This month in our monthly magazine, the cover story is on EC-1992, what does it mean to the average American businessmen, what are the opportunities, what are the concerns?

Next we will cover, on our television network, on the morning two-hour news show, we will do 12-minute segments, Monday through Friday, on some aspect of EC-1992.

We also will be putting out in July a practical guide to EC-1992, which is not dissimilar to what we did on the trade bill. It is in laymanese and will attempt to explain what the issues are and what the opportunities are and what the concerns are for American business related to EC-1992.

In the fall we will organize technical workshops around specific interest areas, testing, certification, what have you. That is the sort of program side approach that we are taking in domestic U.S. business.

We have similar sorts of programs that we run in conjunction with the various American Chambers of Commerce overseas.

Mr. PEASE. You don't try to duplicate in any what the Department of Commerce does to promote exporting?

Mr. WORKMAN. Not really. We were involved in Secretary Verrity's "Export Now" effort.

From our point of view, we think that was a good effort to raise the consciousness of American business, particularly those who traditionally have not been involved in exporting.

Our role, as we see it, the next step, is to continue to give them a little more information to feed on that interest, on that consciousness that has now been raised and to expand it.

But, no, we are not in the business of identifying specific market opportunities and match-making, if you will.

Mr. PEASE. Mr. Smith, did you want to comment on that?

Mr. SMITH. The situation with the copyright industries, is maybe a little different. All these industries are heavily export-oriented already. I think probably the motion picture industry and the music industry generates half of their revenues from outside the United States.

What we are really trying to do is to preserve the export market we already have against piracy.

Where the Alliance function to some extent, in answer to your question, is where we have new markets, formerly pirate, that are now opening up. The best example might be Korea, or Indonesia, which have just passed pretty good copyright laws and it looks like things are going to get much better there. What our member associations do is encourage their member companies to take a new

look at those markets because the situation now has been alleviated to such an extent that they can enter those markets.

Mr. IVERSON. May I add one thing I neglected to add. We do a lot of programs of that type, too.

The most recent ones are going to be on Korea. We have concluded that, in cooperation with the Electronic Industry Association of Korea that there is a market opportunity there.

There are companies that were scared away a few years ago when they couldn't invest and couldn't export there. We think it is open now, and we are making an aggressive move to do that.

The other area we are going to work on is in Mexico. We think the Mexican situation has really changed. We are going to concentrate on Japan, Europe, Mexico, and Korea, in our promotion.

Mr. PEASE. You heard Ambassador Hills earlier indicate that because the nation was not cited this year, it does not necessarily mean it won't be cited the next year.

She also said that U.S. Government in coming up with a list of practices in countries, relying heavily on consultation with American business firms.

Do any of your organizations have plans during the next year to be of assistance to USTR in suggesting additional areas that ought to be subject to Super 301 next year?

Mr. IVERSON. We do have a working group looking at all segments of the electronic industry. In 14 segments, we have had a dramatic decline in the worldwide market share in the last four years.

We are looking at each of those with regard to specifically Japan in seeing where we should recommend further action.

We will be working with the Ambassador's group or the ones that she has designated.

Mr. LEWIS. Maybe I should start by saying that I think the consultation process with industries so far has been successful.

We felt we were listened to. I think that has worked.

We will be examining, in particular, the structural rigidities issue and have a working group looking at that and will certainly be in touch with the USTR as that group arrives at its conclusions.

Mr. WORKMAN. At the chamber, as I noted earlier, we have had a standing subcommittee of our policy committee that deals just with market access issues.

They are in place and prepared and fully expect to be involved in consultations during the investigative phase following Super 301, Special 301.

In terms of the second designation, we will reserve judgment until the end of this calendar year to see where we are.

Mr. PEASE. Thank you.

Mr. Chairman, I think I have no more questions.

I appreciate the testimony.

Chairman GIBBONS. All right, fine.

Mr. Guarini?

Mr. GUARINI. Thank you, Mr. Chairman.

Thank you, gentlemen.

Do you feel that the strategy as indicated by the action of the USTR is being adequately implemented? Are you satisfied that it

was the purpose that you supported the Super 301, if you did give it your support, structural implement initiatives?

There are different categories that were never even thought of when we had passed the Super 301? How do you feel about what has happened in the implementation of 301?

Are you in complete accord or do you think the time limit has been extended creatively by having this SII and other categories that were never put into legislation?

Mr. IVERSON. Well, I will just start by saying, as I said before, we have had 15 negotiations in electronics in 10 years since 1979, and I can't say none of them worked, but they don't seem to have done anything to the trade deficit. One more negotiation doesn't thrill me.

But this look at structural mechanisms does. I think that is a very smart thing to do. The Japanese are going to have to do this themselves, not us.

Mr. GUARINI. Japan has been talking about government procurement and taking away trade barriers and nontariff barriers, et cetera. That has been going on for years, and we never had any action.

We have had lots of talk, lots of discussion. They are always talking with us about it for hours. I have never seen anything materialize.

We have consistently been running these huge trade deficits which are now $56 billion that have been consistent. As pointed out, where we have made progress in other areas of the world, we are consistently behind in our dealing with Japan.

Does more of this talk seem to be productive? Do you think it is going to go anywhere?

Mr. IVERSON. I think that this is an attempt to do something somewhat different. Perhaps, it will lead to improvements.

We also can't forget we have a semiconductor agreement that is not being lived up to. We have telecommunications agreement that is not being lived up to.

I hope some aggressive action is taken on those along with the new 301.

Mr. GUARINI. Hope springs eternal.

Mr. Lewis.

Mr. LEWIS. As I pointed out in our testimony, we were, in fact, concerned that if you went the priority practices route, listing priority practices, that we would wind up with super MOSS talks all over again. That is why we were in favor of having a broader set of negotiations.

I would emphasize the point I made in the testimony, the third point of our recommendation to the USTR, was that they should carry through on section 1306 of the Trade Act, which called for an economic summit between the United States and Japan.

If we are looking for ways in which to put deadlines into the process in, an economic summit would be one way of establishing some deadlines.

Mr. GUARINI. Unfortunately, they have the excuse of their political instability right now with the new program, U-n-o, Prime Minister Uno, just going into office, not having enough, sufficient time to, perhaps, organize himself.

I do think that you are right.

Mr. LEWIS. I was speaking more down the road, not immediately. That would give the various bureaucracies time to begin getting things into place if they knew a summit was going to take place.

Mr. GUARINI. Right.

How do you feel, Mr. Workman?

Mr. WORKMAN. Generally speaking, we are more satisfied with the administration's implementation of the market access provision of the Trade Act than other sections of the trade law.

I am speaking specifically in the areas of export controls, export financing, the TDP Program, et cetera.

On market access, they have met all the deadline. They have made a concerted effort to comply with the law.

They have been engaged in active consultation with business, so we applaud that.

As I noted earlier, we still have reservations about the "structural impediment discussions." We would like to know a little more detail about that.

The centerpiece of our submission was a listing by country of those, if you will, structural impediments as they specifically relate to trade.

Again, it is our view that that is where we are going to get the biggest bang for our buck. That is what we thought the Congress intended when they passed Super 301. We are not going to commit to an as yet unframed set of negotiations or maybe just discussions on structural impediments until we know a little more about the details.

Mr. GUARINI. Things like Third World debt could be a great help, things like the budget deficit, those are things for which we should help ourselves and do more in our regard.

Mr. WORKMAN. I have to underscore this. There is a certain sense of urgency about this. We cannot go on sustaining $135 billion a year trade deficits indefinitely. It has an impact on the business community. It has an impact—the impact is negative.

It is an international global market now. More and more, even a lot of American businessmen need to recognize that more fully than they do.

Mr. GUARINI. Mr. Smith, do you feel the Super 301 does enough for your industry? Are you satisfied with the way the legislation is being implemented?

Mr. SMITH. The answer is unreservedly in the affirmative. However, our focus has been almost entirely on the Special 301, the specific intellectual property provisions.

Just this week we are having meetings at USTR on all 26 of the countries that are on the watch list, and there will be intense, very complex negotiations over the next five months that will consume many, many thousands of man hours at USTR. We could not be more pleased.

They have been totally responsible to our needs. Eleven of the 12 countries that we targeted have been named on the watch list.

Seven of the eight priority watch list countries are countries that we specifically raised as major problem countries of ours. We feel very happy about the the cooperation that USTR is giving us.

In fact, next week a delegation of our members is leaving with the United States mission to go to Korea and Taiwan, hopefully, for some of the final negotiations on solving our problems there.

It has been extremely, a very cooperative process.

They have taken into account our needs and our wishes and desires. We couldn't ask for more.

Mr. GUARINI. Do you all think the Government has adequately consulted with your industries before they had come out with this list? Are you satisfied that you got the attention and input that was necessary to attract the problem with the objectives and motives of the Super 301?

Mr. IVERSON. Yes, sir.

Speaking for American Electronics Association, we had full, ready access, and were consulted and provided our inputs and they were used.

Mr. GUARINI. Lastly, let me ask you in regard to our having people speak the language, sending them abroad at a young age so they understand the culture and the business world where they are, which has often been a criticism of our particular Government, that we don't induce our people to speak languages.

They don't go abroad young enough and long enough to be able to involve themselves in the business community and understand the cultural differences, nuances. Is there more that is being done by the U.S. Chamber of Commerce and the manufacturer association and others in this regard?

Is there anything the Government has to do additionally to help that happen?

I know we give allowances and tax deductions for people that go overseas. The dollar is very low and it is probably very expensive to send our people there.

It is probably cheaper to hire the people in the foreign country to work for you. This has been a practice of Japan to have people speak quite fluently the language and understand how to do business in the country they are doing business with.

What is being done to address that problem?

Mr. WORKMAN. At the chamber we have in general, and our new chairman of the board, John Clendenin, of Bellsouth, has a high interest in education in this country. Education in this country is something that U.S. business is heavily involved in. Not many people realize that. There are retraining programs in the workplace. We are in effect reeducating or in some instances educating initially the products of our education system.

The business community at the State and local levels is heavily involved in trying to improve the overall education system.

On a personal note, I have lived in different countries, been around a lot. The business about the requirement that you have to learn the foreign language, that is certainly useful.

I would also submit to you that the de facto language in international business today is English. You go to Switzerland, the way they communicate there is in English. It is the common language. So certainly, it is helpful. An appreciation of the culture and the practice of a particular country or region you are dealing with is helpful. Probably the French and German teachers are not going to like me for this——

Mr. GUARINI. In my private life, I had matters that dealt with foreign languages in Europe. I had transcripts of legal cases that I had to have interpreted. I got professors of universities to interpret the cross-examination of accountants and experts.

They couldn't do it because they knew classic languages, they knew how to speak the language, but they didn't know the nuances of all the little terms and the details and twists you would get when you are cross-examining someone.

There is an importance to learning the cultural differences and the differences of the terms and words that they use in the business world. I don't think it is just enough to say, I can speak French or German or Italian, or whatever. I think that is a mistake that our country has been making.

We think because we can speak tourist French that we can go into France and do business. That is not a fact.

Mr. WORKMAN. I don't necessarily disagree with all of that, but I think we have to set some priorities. The priorities are, we have to have an education system that produces students that can read blueprints.

Mr. GUARINI. I don't disagree with that at all. Thank you, sir.

Mr. IVERSON. I would like to comment on the program we have in Japan. We have about 5 years ago established with the National Science Foundation, who funded a modest part of it, and our industry funding a modest part, moving students that have graduated from technical schools into laboratories in Japan.

The Japanese companies pay their salaries for a year. We paid for getting them over there and getting them back and giving them intensive, 6-week graduate training. They come back and are hired by our companies and go on to get their master's and Ph.D.

We had our first alumni meeting. It was a phenomenal success. We run 10 or so, 15 maybe, a year. Our applications were over 100 last year. We couldn't accept more than 15, because we didn't have the money to do it. But this is the kind of program we ought to really get behind.

Mr. GUARINI. Excellent. Some of the key is to get them there young enough so they can totally absorb what is happening.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you all very much.

We have a panel comprised of the Chrysler Corp., and Mr. Beckman of the UAW.

Mr. Perkins, we welcome you here; and you may proceed, Mr. Beckman, after that. If you have formal statements, we will put them in the record.

STATEMENT OF ROBERT A. PERKINS, VICE PRESIDENT, WASHINGTON AFFAIRS, CHRYSLER CORP.

Mr. PERKINS. Thank you very much, Mr. Chairman.

Let me begin by thanking you for the opportunity to appear here today. The recently announced structural impediments initiative is intended to address some of the underlying causes of the trade imbalance in Japan.

In structuring the initiatives negotiations, to be successful, the administration will have to identify certain specific practices which

exemplify the structural barriers that contribute significantly to the U.S. trade deficit with Japan. This will be necessary as a practical matter to allow the negotiations to proceed.

It will be necessary as a political matter to demonstrate results, and it will be necessary in order to ensure that the initiative is resulting in real, not token gains. For Chrysler, Mr. Chairman, that means the ability, to sell 100,000 units per year in Japan, let's say 5 years from now.

Restrictions in Japan's automobile distribution system should be utilized in the initiative as a prime example of the anticompetitive distribution barriers which contribute heavily to our trade imbalance.

Last year, Hyundai sold 300,000 units in the United States. They sold less than 200 vehicles in Japan. This is a situation which makes two important points: One, the Japanese market is effectively closed to competitive vehicles; and, two, without Japan's full participation among the trading nations of the world, the United States will continue to be the first market of choice for all auto exports. This is a large market, but it cannot support full participation by every auto maker in the world without reciprocal high volume access, not just tokenism, in other markets.

Japan's auto market is restricted by anticompetitive exclusive dealership arrangements effectively barring new entrants. Thus, Japan's dominant dealer networks, Toyota, Nissan, and Honda, which account for 77 percent of total sales in Japan, make only token efforts to sell other makes. Independent Toyota, Nissan, and Honda dealers are effectively prevented from selling other makes by their manufacturers.

The Japanese restrictions raise serious questions under Japan's antimonopoly law. In the late 1970's, Japan's FTC issued a warning against exclusive auto dealership provisions. Yet, while contractual language has been modified, in fact exclusive dealership agreements have not changed. The market is still effectively closed.

Lack of access is not because U.S. vehicles are left-hand drive. Honda-USA, for example, successfully markets only left-hand drive United States made Hondas through its exclusive Japanese dealership network.

Lack of access is not the result of a lack of commitment by Chrysler. Twenty years ago, when land prices made entry economically feasible and U.S. cars were dominant competitively, the market was legally restricted. Today, barriers to independent entry are prohibitive. We recently compared land prices for three different locations in both Metropolitan Tokyo and New York. The results speak for themselves.

Outside Central Tokyo, 9 miles, in Sugimani-Ku, a parcel of land 4,343 square feet costs $24,056,428, $5,539 per square foot. This would compare to a Chrysler facility in Paramus, NJ, 15 miles from Manhattan, which sells 1,200 units per year and is 276,606 square feet, valued at $5.1 million or $18.44 per square foot.

In order for Chrysler to sell in Japan as the Japanese would wish us to do—that is, enter into the land speculation business—for a mere 4,000 units per year, through 10 dealerships, it would cost an estimated $315 million. The downtown location, not right down-

town, but 3 miles from the center of the city, would cost $171 million alone.

As if the land cost disparity weren't bad enough, the Japanese don't have to buy our cheap land at all; they can sell through existing Chrysler, Ford, and GM dealers, and they do. Chrysler, GM, and Ford agree that the problem is the anticompetitive exclusive dealerships through which Toyota, Nissan, Honda, and other Japanese manufacturers effectively keep their independent dealers from selling other makes.

By comparison, all United States Chrysler dealers sell Japanese cars. Many sell several makes. The same is generally true of Ford and GM dealers. When the Japanese producers entered the United States market 30 years ago, they were able to utilize the world's most open distribution system and piggyback on United States dealers. We are simply seeking similar access.

Earlier this week, in Tokyo, the "Big 3" made a presentation to the American Chamber of Commerce of Japan's Trade Expansion Committee, on auto distribution barriers, which is part of the ACCJ's latest white paper.

Encouragingly, our new Ambassador, Michael Armacost, attended this presentation, and we are hopeful that he will assist our efforts. We are certain he will recognize that the $34 billion of our $55 billion trade deficit with Japan, which is attributed to the automotive sector, cannot be ignored.

Japan's auto distribution system should serve as a prime example for the initiative's negotiations on restricted distribution systems used to limit imports.

As a precedent, automobiles are particularly important because of the JFTC's failure to take any substantive action against an anticompetitive restriction of this magnitude which is acknowledged throughout the industry and the trade press to continue despite the JFTC warning.

The structural impediments initiative will serve as a useful tool to focus attention on distribution; however, if there are no results in a year, Chrysler will have to consider requesting Super 301 action.

Thank you.

Chairman GIBBONS. Thank you.

[The statement of Mr. Perkins follows:]

Statement by Robert A. Perkins, Vice President - Washington Affairs, Chrysler Corporation, at a Hearing on Oversight of the 1988 Trade Act, before the House Ways and Means Trade Subcommittee, Washington, D.C., June 8, 1989

Good morning. I am Bob Perkins, Vice President of Washington Affairs for Chrysler Corporation. I am here today to support the Administration's Structural Impediments Initiative announced in conjunction with the priority countries and practices under Super 301. Let me begin by thanking you for the opportunity to appear today.

In addition to listing three priority countries and six priority practices under Super 301, Ambassador Hills indicated that the Administration will pursue negotiations pursuant to a "Structural Impediments Initiative" to address some of the underlying causes of Japan's trade imbalance, in particular, anti-competitive practices and a restricted distribution system. If utilized aggressively and with the support of industry and Congress, the Initiative could be a keystone of U.S./Japan trade policy, which will benefit U.S. exporters and Japanese consumers.

In structuring the Initiative's negotiations, to be successful the Administration will have to identify certain specific practices which exemplify the structural barriers and contribute significantly to the U.S. trade deficit with Japan. This will be necessary as a practical matter to allow the negotiations to proceed. It will be necessary as a political matter to demonstrate results. Finally, it will be necessary to use such examples to determine whether significant changes are in fact being implemented, that the Initiative is resulting in real, not token, gains. For Chrysler, that means the ability to sell 100,000 units per year, in let's say five years time.

Examples with significant precedential value and involving substantial potential trade should be chosen. Restrictions in Japan's automobile distribution system should be utilized in the Initiative as a prime example of the anti-competitive distribution barriers which contribute heavily to our trade imbalance.

Last year, Hyundai sold 300,000 units in the United States. They sold less than 200 vehicles in Japan. This is a situation which makes two important points: The Japanese market is effectively closed to competitive vehicles; and without Japan's full participation among the trading nations of the world, the U.S. will continue to be the first market of choice for all auto exports. This is a large market, but it cannot support full participation by every automaker in the world without reciprocal high volume access, not just tokenism.

Japan's Automobile Distribution Restrictions

Japan's auto market is restricted by anti-competitive exclusive dealership agreements effectively barring new entrants. Thus, Japan's dominant dealer networks, Toyota, Nissan and Honda, make only token efforts to sell other makes. Independent Toyota, Nissan and Honda dealers are effectively prevented from selling other makes by their manufacturers.

The Japanese restrictions raise serious questions under Japan's Antimonopoly Law. In the late 1970's, Japan's FTC issued a warning against exclusive auto dealership provisions. Yet, while contractual language has been modified, in fact exclusive dealership agreements have not changed. The market is still effectively closed. The Japanese Government quietly acquiesces in this anti-competitive, illegal relationship.

Let me make several points very clear. Lack of access is not the result of a lack of competitiveness. Market research indicates that Jeeps and other Chrysler products could sell well in Japan. In fact, Japanese companies sell knock-offs of these U.S. products. Further, U.S. quality has improved dramatically, and the fall in the dollar's value made U.S. vehicles price competitive. We succeed in other markets, for example, Chrysler anticipates exports to Europe to top 50,000 units this year (three years ago this was zero); to Taiwan's smaller market: 3,300; to Japan:

less than 1000.

Lack of access is not because U.S. vehicles are left-hand drive. Honda-USA, for example, successfully markets only left-hand drive U.S. made Hondas through its exclusive Japanese dealership network.

Lack of access is not the result of a lack of commitment by Chrysler. Chrysler cannot, however, gain reasonable access to the very high-volume, family-priced vehicle market without access to the existing distribution networks dominated by Toyota, Honda and Nissan dealers which control 77% of sales. Twenty years ago, when land prices made entry economically feasible and U.S. cars were dominant competitively, the market was legally restricted. Today, barriers to independent entry are prohibitive. Chrysler recently compared land prices for three different locations in both Metropolitan Tokyo and New York. The results speak for themselves.

The first example is a dealership 28 miles from Tokyo, 5,687 square feet, for $11,985,250 or $2,107 per square foot intended for 240-480 units per year. It compares with a new parcel of land in Yorktown, NY, in Westchester County, 35 miles from Manhattan, of 177,289 square feet, which is intended for 600 units per year, and cost Chrysler $800,000 or $4.51 per square foot two months ago. This area, by the way has several other dealerships including Honda, Ford, Chevrolet and Jeep.

Outside Central Tokyo, 9 miles, in Suginami-Ku, a parcel of land, 4,343 sq. feet costs $24,056,428 -- $5,539 per square foot. This would compare to a Chrysler facility in Paramus, New Jersey, 15 miles from Manhattan which sells 1200 units per year and is 276,606 square feet, valued at $5.1 million or $18.44 per square foot.

The third, and most striking example, is for a parcel of land three miles from the Central Train Station in Tokyo. The cost of land for a dealership with an intended sales capacity between 240 and 480 units per year cost $30,144 per square foot. A 5,687 square foot facility would run $171,428,160. Compare that to a Chrysler property in Manhattan on 11th Avenue with land totalling 22,594 sq. ft. was recently appraised at $25 million or $1,106 per sq. foot.

In order for Chrysler to sell in Japan as the Japanese would wish us to do -- that is, enter into the land speculation business -- for a mere 4000 units per year, through ten dealerships, it would cost an estimated $315 million*. This is a totally unrealistic proposition for 4,000 sales per year.

Chrysler dealers sold in excess of 300,000 imports of a variety of makes in the United States last year. We sold 733 units in Japan. Even allowing for a difference in size between the U.S. and Japanese markets, we should be able to reasonably expect to sell in excess of 100,000 units in Japan per year in 5-10 years. But the investment for shelf space for a mere 4000 units is prohibitive.

As if the land cost disparity weren't bad enough, the Japanese don't have to buy our cheap land at all--they can sell through existing Chrysler, Ford and GM dealers, and they do. Chrysler, GM and Ford agree that the problem is the anti-competitive exclusive dealerships through which Toyota, Nissan Honda and other Japanese manufacturers effectively keep their independent dealers from selling other makes. By comparison, all U.S. Chrysler dealers sell Japanese cars. Many sell several makes. The same is generally true of Ford and GM dealers. When the Japanese producers entered the U.S. market thirty years ago, they were able to utilize the world's most open distribution system and piggyback on U.S. dealers. We are simply seeking similar access.

Earlier this week, the "Big 3" made a presentation to the American Chamber of Commerce of Japan (ACCJ) Trade Expansion Committee, on auto distribution barriers which is part of the ACCJ's latest White Paper (see attachment 2). Encouragingly, our new Ambassador, Michael Armacost, attended this presentation and we are hopeful that he will assist our efforts. We are certain he will recognize that the $34 billion of our $55 billion trade deficit with Japan which is attributed to the automotive sector, cannot be ignored.

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* 1 downtown @ $17. million = $171
3 near @ $24 million = 72
6 outlying @ 12 million = 72
(see attachment 1) $315 million

Exclusive dealing agreements are a virtually insurmountable barrier to Japan's market. For example, in this country a Chrysler LeBaron costs $800 less than a comparable Honda Accord. In Japan, the Chrysler costs almost $11,000 more than the U.S.-built Accord. Almost two-thirds of this differential results from Chrysler's lack of access to the primary distribution channels, and even with the $11,000 disadvantage, Chrysler is still outside of the primary distribution network.

Automobile Distribution and the Structural Impediments Initiative

Japan's auto distribution system should serve as a prime example for the Initiative's negotiations on anti-competitive practices and restricted distribution systems used to limit imports.

As a precedent, automobiles are particularly important because of the JFTC's failure to take any substantive action against an anti-competitive restriction of this magnitude which is acknowledged throughout the industry and the trade press to continue despite the JFTC warning.

The Structural Impediments Initiative will serve as a useful tool to focus attention on distribution, however, if there are no results in a year, Chrysler will have to consider requesting Super 301 action.

Conclusion

With support from industry and Congress, the Administration's Structural Impediments Initiative could prove to be a keystone in addressing U.S./Japan trade problems. To be successful, however, it must result in real liberalization--not tokenism. Real results in important sectors which have been plagued by structural barriers and which can serve as examples of liberalization are absolutely essential from both a policy and practical perspective. Japan must join as a full partner with the rest of the trading world.

Anti-competitive practices which restrict Japan's automobile distribution system are perhaps the world's largest non-tariff barrier and exemplify the type of structural impediment which is at the root of our trade imbalance. Solutions to the restricted automobile distribution network should be a leading objective of the Structural Impediments Initiative negotiations.

Attachment 1

Comparative Land Costs
Japan vs. New York

DOWNTOWN	JAPAN	NEW YORK
Miles from Central Tokyo/Manhattan	Tokyo 3 miles	Manhattan 11th Avenue
Total Square Footage	5,687	22,594
Total Land Cost	$171,428,160	$25,000,000
Cost per Square Foot	$30,144	$1,106
Annual Sales Projection	240-480 Units	2,500 Units

NEAR	JAPAN	NEW YORK
Miles from Central Tokyo/Manhattan	Suginami-Ku 3 miles	Paramus, NJ 15 miles
Total Square Footage	4,343	276,606
Total Land Cost	$24,056,428	$5,100,000
Cost per Square Foot	$5,539	$18.44
Annual Sales Projection	240-420 Units	1,200 Units

OUTLYING	JAPAN	NEW YORK
Miles from Central Tokyo/Manhattan	Ome City-Ku 28 Miles	Yorktown, N 35 miles
Total Square Footage	5,687	177,289
Total Land Cost	$11,985,250	$800,000
Cost per Square Foot	$2,107	$4.51
Annual Sales Projection	240-480 Units	600 Units

Attachment 2

ACCJ White paper--1989 Update

BACKGROUND

In calendar year 1988, Japanese manufacturers exported slightly more than 2,050,000 passenger cars to the U.S. under the Voluntary Export Restraint Agreement; during the same period, there were registrations in Japan of only 14,511 passenger cars built by U.S. auto manufacturers (including approximately 5,400 Honda Accord coupes). This disparity accounted for $23.6 billion, or nearly 50% of the total $47.6 billion trade imbalance between the U.S. and Japan. Little improvement in the imbalance is expected in 1989, for reasons outlined below.

The U.S. auto manufacturers (the Manufacturers) want to expand sales in Japan, and in fact have all recently taken steps to strengthen marketing, distribution and retail sales efforts in Japan, which should result in increased penetration of the Japanese market. Although it will be impossible to balance the automotive sector trade (balancing would require the U.S. manufacturers to capture approximately 50% of the Japanese domestic market), it is felt that further increased penetration is possible. It will, however, require large investments in marketing and distribution in Japan. The Manufacturers are willing to consider making such large investments , but believe it would be irresponsible to do so without assurances of 1) fair access to distribution/dealer networks, and 2) removal of remaining onerous certification requirements.

AREAS OF REQUIRED IMPROVEMENT

As a result of ongoing regular discussions between the Manufacturers and Ministries of the Japanese government, there have been numerous efforts by the Japanese government in recent years to reduce barriers to automobile imports. ACCJ believes, however, that there still are opportunities to improve access. This paper provides discussion in three broad areas and specific recommendations in two areas where it is felt additional action can be and should be initiated to improve access for automobile imports.

DISTRIBUTION

The Manufacturers are committed to distribution and sale of their U.S.-manufactured products in Japan, and are each taking action to expand sales through various distribution arrangements. While many obstacles to importation of foreign vehicles into Japan have been lowered or removed, access to the existing distribution system continues as a major inhibitor to growth in automotive imports by foreign manufacturers. During the time when the Japanese auto industry was developing, domestic manufacturers established extensive dealer networks, but imports were restricted by tariffs and other barriers that were in place. Today, although nominally free to expand sales, all

foreign manufacturers find that the Japanese domestic automotive distribution system is still virtually inaccessible. This contrasts importantly with the situation in the U.S., where open access to the automotive retail system has contributed substantially to the success of foreign manufacturers in that market. (Data from the May 25, 1988 issue of Automotive News indicate that as of January 1, 1988, 1148 of 19530 domestic new car dealerships in the U.S. also operated non-affiliated import franchises in the same facility. Data are not presently available on the number of import dealerships owned and operated separately by U.S. domestic dealers. Many of these were initially operated from the same facility, with separate facilities being established after a volume base was developed.)

A wide range of factors which could account for this discrepancy include fundamental differences in the relationships between manufacturers and retailers, varying equity holdings in dealerships by the manufacturers, arrangements limiting the freedom of dealers to sell competitive products, and wholesale pricing policies which enable companies to support dealers through preferential pricing. The result is that U.S. manufacturers are denied access to the Japanese automotive retail system. Although the U.S. auto manufacturers are willing to take steps to significantly increase imports into Japan, these steps must be preceded by action which will assure access to the Japanese automobile distribution system equal to that enjoyed by Japanese manufacturers in the U.S.

For substantial progress to be made in improving the bilateral automotive sector trade balance, a cooperative effort is required by the appropriate Japanese governmental agencies, automobile manufacturers and the automotive retail industry. If the necessary action is not taken, the imbalance of automotive trade will continue to be an irritating element in Japanese/U.S. bilateral trade.

PROPOSED CORRECTIVE ACTIONS

A. DISTRIBUTION

Request the Japanese side to identify the most appropriate Japanese organization and have it initiate the necessary action to 1) establish a forum for identifying specific actions needed to create comparable accessibility to the Japanese automotive distribution system for U.S.manufacturers, and 2) provide leadership in effecting these actions.

Chairman GIBBONS. Mr. Beckman.

STATEMENT OF STEVE BECKMAN, INTERNATIONAL ECONOMIST, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW

Mr. BECKMAN. Thank you. Our statement covers a number of issues related to this LISTR decision.

It includes our commendation of Ambassador Hills for the effort she made, defending this process internationally very effectively, and for naming Japan as one of the priority countries.

In her discussion this morning, she highlighted the drawback we see in the decisions that the administration has made. She noted that, basically, the process of the Super 301 is identical to the normal 301 process. And in choosing priority practices and priority countries and the manner in which the administration has done so, the process has in fact been reduced to a normal 301 process.

When we discuss issues of wood products and supercomputers and satellites with Japan, we are going to be engaged in a process that is, from our point of view, indistinguishable from a normal 301 negotiation over specific barriers.

The whole purpose of the Super 301 provision was to broaden those discussions to allow all of the issues involved in bilateral trade and in unfair trade practices on both sides to be discussed so as to change results.

There is a results-oriented, results-based measure of success in the provision. We are disappointed that the resulting decision by the administration does not permit those discussions. In fact, the structural impediments negotiation where the issues we believe should have been raised as Super 301 issues will be discussed, the announcement by USTR did not include an acknowledgment or acceptance of entering into these discussions by Japan.

This is an initiative of the United States, not an agreed-upon set of negotiations. The parameters had not been set when the decision was made to separate those issues out. No timetable, no results-based determination is required in that set of negotiations.

Further, by targeting Brazil and India, the administration has shown it is not interested in increasing United States exports as much as possible through the Super 301 process. Obviously, the countries that have the potential to increase their imports from the United States are those that have the largest trade surpluses. They have the ability to expand their imports without hurting their domestic economy, without putting impediments in the place of economic growth and development in other countries.

They have the available resources to increase their purchasing, expand world growth and production in a way that enhances living standards abroad and at home. Brazil and India do not have that capability.

West Germany, despite the overall U.S. trade balance with the European Community, still maintains a large surplus with the United States and the world. West Germany has the opportunity to increase its imports without hurting world trade, without harming its own citizens. Those are the areas we think the administration should have pushed in its decisions regarding Super 301.

As I say, we are satisfied in some respects with the decisions that have been made, and specifically with the ability of Ambassador Hills to deflect criticism of this provision internationally, but it could have done a lot more for American exports.

Thank you.

[The statement of Mr. Beckman follows:]

STATEMENT OF
STEVE BECKMAN, INTERNATIONAL ECONOMIST
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
BEFORE THE
SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES
June 8, 1989

Mr. Chairman, my name is Steve Beckman. I am an international economist for the UAW, specializing in the impact of international trade on the union's members and the U.S. economy. We appreciate having this opportunity to provide the UAW's views on the actions taken by the United States Trade Representative under the "Super 301" provision of the Omnibus Trade and Competitivenes Act of 1988.

In testimony before this subcommittee in 1986 and before the full committee in 1987, UAW President Owen Bieber presented our union's analysis of the trade problems facing the nation and our support for results-oriented legislation to address those problems. To deal with the unprecedented U.S. trade deficit, we endorsed the Gephardt amendment, which was included in the trade legislation that passed the House in May, 1987. We believed then, and we believe now, that the need to restore greater balance to world trade is crucial and that countries with large worldwide surpluses have a responsibility to contribute to achieving that balance. The Gephardt provision set specific targets for reducing U.S. trade deficits with such countries through the elimination of their trade barriers and practices that limit access to their markets.

The Senate adopted a provision that followed a similar procedure to the Gephardt amendment, but set targets for increased U.S. exports rather than reduced U.S. trade deficits. The Senate provision was labeled "Super 301" and is, in substance, identical to the provision adopted by the conference committee and enacted into law. The UAW supported this provision, while noting that vigorous enforcement by the Administration would be required to make it an effective stimulus to increased U.S. exports and improved trade balance.

It is important to remember that one impetus behind the trade deficit reduction provision adopted by the House and the Super 301 provision passed in the Senate was the lack of success of negotiations under existing Section 301 authority in producing significant results. The one-barrier-at-a-time nature of that process failed to generate increased exports of competitive U.S. products because of the complex web of barriers to imports maintained by many countries. The Congress adopted a new procedure in the omnibus trade legislation to address the interrelationship of barriers and to generate sufficient leverage with countries that utilize such barriers to produce tangible results in the form of increased U.S. exports.

In directing the U.S. Trade Representative to identify "priority foreign countries", the Super 301 provision sets as criteria the extent of their unfair trading practices and the increase in U.S. exports that could be expected if those practices were eliminated. The obvious intent of this selection process is to choose those countries that have the economic capability of purchasing additional U.S. products but do not do so because of the import restricting acts, policies and practices they employ.

The identification of "priority practices" is to target those practices, including "major" barriers and practices, that have the most significant impact on U.S. exports. The inclusion of the term "major" is important because the Senate debate on this provision included a colloquy by the provision's authors which described the barriers covered to be quite inclusive - only those with a negligible impact on trade were to be considered excluded by this description. In addition, the impact on U.S. exports of the removal of the barriers is the focus of the selection of practices for identification.

These elements of the Super 301 provision are raised here to call attention to the expectation of many in the Congress and of the UAW, among others in labor and business, that this new process would be implemented in a way that would put effective pressure on countries with the greatest capability to increase imports from the U.S., especially those with large trade surpluses, to do so. The removal of the pervasive barriers to imports in place in Japan, West Germany, Taiwan and South Korea would certainly offer the greatest potential to increase U.S. exports. The comprehensive approach of initiating negotiations with each country over all of its barriers, including their institutional supports, had the potential to achieve results because of the threat

of retaliation if exports failed to increase. The "appearance" of changes in policy or practice in a single area would not defuse the Super 301 process, as it has defused so many other bilateral talks.

The announcement by Ambassador Hills two weeks ago of the Administration's selection of "priority practices" and "priority countries" was, frankly, a disappointment to the UAW. To her credit, Ambassador Hills has presented an impressive defense of the decisions made to those in the U.S. and abroad who have attacked the entire Super 301 process as protectionist and a violation of the General Agreement on Tariffs and Trade (GATT). We endorse Ambassador Hills's position that the goal of this process is to open markets, not close them, and that the initiation of discussions regarding trading practices can hardly violate the GATT.

The UAW is not satisfied, however, that the Administration's choice of countries and practices adequately fulfills the potential of the Super 301 process to move U.S. trade toward balance and to reduce the damage to American workers that results from the trade polices of our own and other nations. An examination of the countries and practices identified by the Administration will highlight the areas of our concern.

First, the Administration identified Japan as a "priority country". Given the massive public relations campaign to prevent it, we commend Ambassador Hills for taking this step. Surely, the number and pervasiveness of significant barriers to U.S. exports to Japan warrant its identification as a priority country for the U.S. Unfortunately, only three of these barriers were cited as priority practices for which Section 301 cases must be filed. As a result, the negotiations under the Super 301 process need address only these practices. They will be virtually indistinguishable from the series of barrier-specific negotiations that have gone on nearly continously between the U.S. and Japan for more than ten years. It is precisely this type of negotiating framework that the Super 301 process was intended to supercede.

The barriers in Japan identified by the Administration are clearly not the ones with the most potential to increase U.S. exports upon their removal. The Administration effectively acknowledged this by simultaneously proposing negotiations with Japan over "structural impediments" to U.S. exports, including Japan's distribution system, pricing mechanisms and anti-competitive practices, such as bid-rigging, market allocation and group boycotts. It is these issues that should have been identified as priority practices, subject to time-limited negotiations and a results-based measure of success in eliminating their restrictive effect on U.S. exports. In fact, the Section 301 statute was amended in the 1988 trade act to specifically include anti-competitive practices in the definition of unfair trade practices. Only by the inclusion of these "structural" barriers and a much longer list of specific "major" barriers in Japan would the type of comprehensive negotiations over the trade policy approach of Japan and its impact on U.S. trade that was envisioned in the Super 301 process take place. The UAW will, of course, assist the Administration in making the Super 301 and structural impediments negotiations with Japan as productive as possible.

The Administration's identification of Brazil and India was puzzling. Certainly, both countries do maintain pervasive restrictions on imports. However, by the other criteria in the Super 301 procedure, those concerning the expectation of significant increases in U.S. exports if the barriers were removed, these two countries should not have been given "priority" status ahead of others. Further, the elimination of the practices identified for India would have precious little impact on U.S. exports; investment opportunities would be opened for U.S. companies with no necessary increase in U.S. production and employment.

Brazil's import bans and licensing system keep U.S. products out of its market. Domestic content requirements also preclude exports of automotive vehicles from the U.S. and encourage Brazilian exports to the U.S. It is undeniable, though, that the driving force in Brazilian trade policy today is the debt crisis and the financial burden of Brazil's debt repayment obligations. The trade surplus generated by Brazil has been eaten up by payments to U.S., foreign and multilateral financial institutions. Limits on imports help keep scarce dollars available for interest payments.

The UAW has described the Reagan Administration's policy on debt as "protectionism for the banks". American industrial workers have lost jobs due to cutbacks in exports and increased import competition so that banks can keep loans to Brazil on their books at values well above the values placed on them by the open market. Brazilian workers have paid a heavy price in lost income due to austerity measures that are also meant to keep payments to the banks flowing.

The UAW strongly believes that significant debt relief in the form of write-offs of some outstanding debt and interest rate reductions would be the most effective stimulus to increased U.S. exports to Brazil. The Bush Administration has contributed to making such debt relief possible through the Brady Plan, but implementation of this

initiative has been delayed by the reticence of the banks to contribute to meaningful debt relief. Successful removal of import barriers will only expand U.S. exports to Brazil when its debt burden has been substantially reduced.

Placing India on the priority country list is also unlikely to produce significant improvement for U.S. exports. India's trade with the U.S. is quite small, with no significant change in sight. Full implementation of trade agreements obligations by India would not open enough opportunities for U.S. exporters to place it ahead of numerous other nations as a U.S. trade policy "priority".

The practices of India identified by USTR are only remotely related to U.S. exports. The UAW is convinced that affording U.S. firms the opportunity to sell insurance in India would yield a very small impact on U.S. exports. There are a number of U.S. companies that would set up offices, hire agents and, possibly, generate profits in India if this market were open, but the benefit of this activity for American workers is difficult to discern. The same is true for India's trade-related investment measures. While there could be a small gain from loosening restrictions on imports of parts shipped to U.S. investors in India, the main result would be more U.S. investment in India and more production competing with U.S. output.

While the Administration chose to name Brazil and India as priority countries, it failed to name West Germany, Taiwan and South Korea. Because of their multi-billion dollar trade surpluses with the U.S. and worldwide, these countries could easily raise their purchases of exports from the U.S. In the cases of the latter two countries, trade liberalization plans produced through consultations with the U.S. government were accepted as adequate responses to U.S. complaints about restrictive trade practices. Unlike agreements obtained through the Super 301 procedures, these plans have no results-oriented measure of success. As long as the specific commitments made are carried out, these countries will have met their obligations, even if absolutely no change in U.S. exports occurs. This, again, is the pattern of past U.S. negotiations which the Super 301 provision was supposed to change.

The remaining large trade surplus country, West Germany, did not resolve any of the numerous outstanding trade disputes with the U.S., did not make a commitment to change its trade distorting practices and still was not named a priority country by the Administration. Looking at trade issues alone cannot explain this decision. It appears that military, political and other considerations still outweigh trade policy issues in the Administration. The UAW recognizes the importance of the non-trade dimensions of our relations with other countries, but we also believe that the weakening of the U.S. economy resulting from insufficient attention to the effects of international trade has a direct effect on Americans that cannot be ignored. Sweeping trade issues out of sight only allows them to fester. We should address our trade problems with West Germany directly.

Mr. Chairman, we believe U.S. exports, the U.S. economy and the health of the international trading system would be envigorated by a frank discussion of the imbalances in trade and government policies that characterize the current international economic environment. We had hoped that the Super 301 process could be an instrumental part of such discussions. The Administration's decisions offer only a faint glimmer of that potential. Its failure to identify the trade surplus countries that have the ability to dramatically increase their purchases of exports from the U.S. and elsewhere will make significant progress difficult to achieve. We will do what we can, though, to assist in using the Administration's actions to promote greater worldwide trade balance and expanded U.S. exports.

Thank you, Mr. Chairman, for affording me the opportunity to provide the views of the UAW on the implementation of this important U.S. trade policy initiative.

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

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May 12, 1989

Honorable Carla Hills
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ambassador Hills:

While we have not yet had the opportunity to meet and discuss the important trade issues that face the United States, I am sure that you are aware of my deep concern about trade policy and its impact on the members of my union and other American workers. As one with some experience in the battles over trade issues, I admire your courage in taking on the difficult task of U.S. Trade Representative and the determination you have already shown to defend U.S. interests and uphold the spirit as well as the letter of U.S. trade laws.

It is the implementation of the "Super 301" provision of the 1988 Omnibus Trade and Competitiveness Act that prompts my writing to you at this time. The UAW has been actively involved with this provision since its earliest congressional consideration. We supported the creation of this new approach to bilateral trade discussions because the existing mechanisms have failed to resolve the dangerous trade imbalances that have developed. It is our firm belief that using the Super 301 process as simply another means to pursue a few individual unfair trade practices will not advance our nation's interests nor will it reduce the impact of unfair practices on U.S. trade or set us on a path toward trade balance.

The trading practices of the vast majority of countries are geared to enhancing local production in specific industries. National economic strategies, whether they are export led or import restricting, or both, pursued for many years lay at the heart of the present world trade imbalance. The lack of U.S. strategies, or adequate responses to programs established abroad, set the stage for the massive U.S. trade deficit. Misguided macroeconomic policies exacerbated the problem and intensified it in the 1980's, but the pre-conditions were already present. The most successful practioners of national industrial strategies—Japan, South Korea, Taiwan and West Germany—are the countries with large trade surpluses with the U.S., accounting for two thirds of the total U.S. worldwide trade deficit.

The Super 301 process should be used to discuss the trading regimes of these major U.S. trading partners and their contribution to the U.S. trade deficit. There is no question that specific, identifiable "unfair" trading practices are not the sole reason for the surpluses of these entities, but there are sufficient practices to bring them to the negotiating table for serious, comprehensive negotiations.

The countries most prominently mentioned for identification under the Super 301 process have, understandably, protested the threat of U.S. retaliation outside the GATT framework. They claim that reducing trade through restrictions on U.S. imports (which pre-judges the outcome of the Super 301 process) will injure the U.S. and all trading nations. We have a pointed response to such claims. U.S. exports and domestic production have been restricted by a variety of foreign discriminatory practices for many years. To restore trade balance now without restricting access to the U.S. market will require additional foreign purchases of U.S. output of $140 billion with no change in U.S. imports. If other countries are offering such markets, we applaud them; if they will accept the dramatic change in exchange rates that would bring it about, we can live with that. What we cannot abide is the growing indebtedness of the U.S. and the industrial injury that is produced by the trade deficit. "Staying the course" in trade policy, including the inappropriate, uncreative use of Super 301, will leave the U.S. a poorer, weaker nation. Foreign exporters should have a vested interest in preventing this from occurring, just as we do.

There is also concern expressed abroad that the Super 301 process blames other countries for the U.S. deficit and, by labeling other countries as "unfair traders," fosters national resentment and anti-American pressure. Pursuing the Super 301 process as an extension of present U.S. trade policy could, indeed, produce this result. The UAW believes that it is important to respect the sovereign rights of other countries to pursue their national interests. By the same token, it is legitimate for the U.S. to do the same. Since the trade patterns that currently exist, especially with the four surplus trading partners named above, are weakening rather than strengthening the U.S. economy, negotiations to alter those trade patterns are in order. The purpose of the negotiations under Super 301 is to accomplish this; the threat of retaliation at the end of the process is to stimulate the negotiations. In the end, though, the U.S. must develop a trade policy that fosters economic development, industrial strength, higher living standards for workers and reasonably balanced trade. This will be done unilaterally if bilateral negotiations fail to achieve these goals.

The UAW places such a high priority on the Super 301 process because it is the best forum available in which to address the trade imbalance. The Uruguay Round of GATT negotiations underway does not afford such an opportunity. By emphasizing the issues of services, investment, agriculture and GATT procedures, the U.S. has ignored the area where international imbalances are concentrated—manufactured goods trade. American workers stand to lose if the Super 301 process is de-emphasized in order to focus effort on the Uruguay Round.

It is within your power, Madame Ambassador, to use the Super 301 process as a powerful tool to engage our trading partners with large surpluses in negotiations aimed at achieving a common understanding of the problems for the U.S. and the world economy posed by the trade imbalances and, then, resolving trade problems. We sincerely hope that it will be successful. Rest assured, however, that if the Super 301 mechanism fails to satisfy this aim, we will waste no time in working with the Congress to develop a less discretionary approach.

I hope we will have an opportunity soon to discuss these important matters. You have our strong support in forcefully representing the nation's interests with our trading partners.

Sincerely,

Owen Bieber

Owen Bieber
President

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Chairman GIBBONS. Mr. Beckman, I think your criticism is well founded. I hope that as we grow in this process, we can do a better job, a more vigorous job. I think one of the things we faced is we did look like we were taking unilateral action and the rest of the world looked like they were prepared to gang up against us.

While we are dealing with sovereign countries, we do have a problem there. The Japanese tried to exploit that, but were unable to. Perhaps if Ms. Hills had been more vigorous, they would have been able to exploit that. I can understand why you complain as you do, and I think there is some justification for your complaint. We do live in a world that is peculiarly organized, where we don't always get our way, despite the fact that we may always be right, which we are not always, of course.

I am for opening these markets and for pushing them open. I have to recognize that there are some limitations in the extent to which we can force sovereign countries to finally do anything. It is a frustrating experience. I know you appreciate that, and I appreciate where you come from on this.

Mr. BECKMAN. Mr. Chairman, I have a comment on that. I think the choice of India and Brazil is particularly puzzling in light of the fact that these are the two countries that largely lead the Third World delegation in the GATT negotiations.

The United States picked on two of the countries that have the most influence in the developing countries in the negotiations the United States set as its first priority, and targeted those specific countries for their unfair practices.

I can understand there may be some precedential value in focusing on countries with great influence. It seems to me it also creates the appearance that you have cited, of ganging up on those countries that have the potential to actually win some concessions from the United States in multilateral negotiations, and therefore, the United States is telling the rest of the countries as well that they better not dare try to step on our toes, that we are going to strike back against those countries that do so. I think that is terribly destructive of the multilateral process, and I wish it had not been done.

Chairman GIBBONS. Interesting point.

Mr. Perkins, do you feel the Japanese system violates their antitrust laws? I got the impression you do.

Mr. PERKINS. Yes, Mr. Chairman. We feel that if it doesn't violate the law, and I am not a lawyer, but our legal advisors are advising us that the laws are pretty loosely constructed in Japan.

Chairman GIBBONS. They are.

Mr. PERKINS. If it doesn't violate the law, it certainly violates the spirit or the intent of the law as we wrote it.

Chairman GIBBONS. We even have administrations over here that from time to time kind of ignore the enforcement of the law. I think your criticism is accurate. It is an interesting point of view that you bring.

I think it is one that needs to be followed up vigorously. Unfortunately, other manufacturers of American cars—your company being the exception—don't appear to me to be vigorously interested in exporting to those markets. I may be wrong, but I have talked

with chief executive officers of both of those companies. They would rather buy in than work in. That is what they have done.

I appreciate your trying to keep our foothold or trying to keep a toehold in that market, I should say, because I think it is very essential that we do, very essential. We ought to think about exporting cars from the United States to Japan.

Obviously, if they can do it, we can do it. They are not any smarter than us, they don't work any better than us. They have got no technology that is really ahead of ours. It is just the way they marshal their forces and put them together.

Obviously, their distribution system is a problem, and your testimony is the first I have heard that has really accurately pinpointed that problem.

Let me ask you about the cost per square foot on the land over there. Those are really startling figures. I assume this is land that was zoned so it could be used only for industrial purposes? In other words, we are not comparing beachfront property with some burned-out place in Harlem, are we?

Mr. PERKINS. No, we are not, Mr. Chairman. These are actual examples of property that was sold in the last 18 months in Japan and in this country for the purpose of the sale of motor cars and trucks.

Chairman GIBBONS. I can see where you can't make any profit. You never could make a profit if you have to pay $30,000 per square foot near the city in Japan versus $1,100 in New York City, or $5,500 per square foot versus $18 per square foot in New York. That is pretty high. I don't know how they raise rice on that kind of land.

Mr. PERKINS. It is difficult, having lived in Japan for several years and been the director of a Japanese company, it is a very serious problem for them, too. You can put on a Japanese hat, it is very hard for a Japanese company to expand distribution. What it really does is freeze in market share. Those that have the location, will have the market share.

We are trying to get shelf space.

Chairman GIBBONS. That is a very interesting point of view, and you are entitled to it. This thing must work two ways. It must work two ways. The opportunities to trade have got to be the same, reciprocal. The trade doesn't necessarily have to be reciprocal, but the opportunities should be reciprocal.

I thank you for your testimony. We will see how we can put it to proper use. Thank you very much.

This concludes the hearing for today. I thank all those who have attended. The record will be open until June 16 for any additions, corrections, or insertions. I think this has been a useful set of hearings. By the way, I drive one of your products.

[Whereupon, at 12:45 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATEMENT OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

The American Association of Exporters and Importers (AAEI) is a national association comprised of 1200 U.S.-company members. Our members export, import, distribute and manufacture the complete spectrum of products, including chemicals, electronics, textiles and apparel, machinery, footwear, food, and automobiles, wines and specialty items. AAEI members also include many companies which serve the international trade community, such as customshouse brokers, freight forwarders, banks, attorneys and insurance carriers.

AAEI members include exporters who benefit from increased foreign market access. Trade expansion and fair trade have been cornerstones of AAEI's philosophy for the 68 years of its existence. AAEI's members understand the necessity of a strong negotiating position. However, AAEI's experience has shown that unilateral retaliation does not benefit U.S. exporters, U.S. businesses that import, or U.S. consumers.

STRENGTHENING THE GATT

The U.S. has been and is a strong advocate of strengthening the GATT dispute settlement mechanism. In the current Uruguay Round of Multilateral Trade Negotiations, more countries than ever before have recognized the need to "put more teeth" into the GATT. As a prime force behind the development of a more effective multilateral trading system, the U.S. can ill afford unilateral trade retaliation at this time. If a trade agreement has been breached, as the U.S. alleges, the GATT allows for the aggrieved party to seek and gain redress -- if not market access, then compensation for the lost sales. AAEI urges the U.S. to bring its complaints over foreign market access or unfulfilled trade agreements with its trading partners to the GATT.

INEFFECTIVENESS OF RETALIATION

U.S. retaliation under section 301, super 301 or special 301 whether in the form of higher duties, quotas or other trade restrictions, will do nothing to open foreign markets further. In fact, several trading partners have stated their intentions to file complaints with the GATT over the U.S. use of §301, which if they were found to be valid, would pressure the U.S. to either lift the restrictions or pay compensation to those retaliated against.

Retaliation will harm U.S. businesses, employees and consumers. Many U.S. companies use imported components (targeted for retaliation) in their final products. Restrictions or higher duties on such parts will render the U.S.-made completed products uncompetitive, in the U.S. and overseas.

For the production in the U.S. which depends on imported components, higher prices for those components would make such production economically unfeasible, endangering the jobs of many U.S. workers.

AAEI supports the further opening of foreign markets and protection of intellectual property rights, not through retaliation but rather through direct negotiations and the multilateral process.

NATIONAL INTEREST

AAEI believes that the U.S. and U.S. industry would be better served by U.S. adherence to U.S. international obligations. The current emphasis on country-by-country retaliation is not a 'major victory for U.S. manufacturers', rather it undercuts the U.S. negotiating leverage in the Uruguay Round. AAEI believes that the Administration must not be swayed by the breeze of the moment but must ensure the long term trade interests of the U.S. through the multilateral process.

STATEMENT OF JULIAN C. MORRIS, PRESIDENT,
AUTOMOTIVE PARTS & ACCESSORIES ASSOCIATION, INC.

Mr. Chairman and Members of the Committee:

As president of the Automotive Parts & Accessories Association (APAA), I welcome this opportunity to present our views on the new 1988 trade act process for identifying countries and practices that block trade of competitively priced, world-class U.S. automotive parts and accessories -- the same countries whose industries exploit the the open U.S. market for cars and parts.

It is time our trading partners are told that the price of continued openness is evidence of reciprocal access for U.S. suppliers in their markets.

APAA appreciates this chance to discuss the question of fair play in a high-stakes world game governed by unfair rules and different business systems, and increasingly dominated by those who follow them. With U.S. exports slowing and no breakthrough on our budget deficit-fueled desire for more imports, it is time to give serious thought and energy to developing sound U.S. trade policy for the 1990's. The contrast between current U.S. automotive trade policy and the policies of our trading partners is acute and troubling: Our policies tend to be passive or absent, while theirs tend to be aggressive and targeted.

When the architects of the 1988 trade act built the Super 301 no-nonsense, results-oriented approach to market access negotiations, America laid the foundation for a stronger U.S. trade policy approach towards correcting trade abuses.

In APAA's March 23, 1989 submittal to the USTR, attached as Appendix A for the Committee's reference, we identified six major trading partners -- Japan, Canada, Korea, Taiwan, Brazil and Mexico -- whose government and/or business policies and practices impede U.S. parts exports.

Thanks to S. 301 improvements, foreign anticompetitive business systems that block fair commercial consideration of U.S. parts sales now are within reach of retaliation whenever those systems are tolerated by foreign governments.

In each case of course, APAA hopes for a friendly resolution of our market access problems. We urge the U.S. to head back to the table on U.S.-Japan and U.S.-Canada parts trade issues. Moreover, the leverage provided by the availability of Super 301 retaliatory action opens possibilities for meaningful results-oriented market opening talks with Korea, Taiwan, Mexico, Brazil and others. Super 301 assures our partners that the U.S. can come to the negotiating table with more than just talking points.

We would caution, however, that America's long term negotiating strength depends on the development of a cadre of career negotiating experts who will bring to the table the same industry depth, institutional memory and skill long enjoyed by other nations' career negotiators. By pressing a strong, steady offensive in pursuit of U.S. trade objectives, we would not be forced to rely solely on the market closing weapon.

In the course of this review we will comment on USTR's disposition of our primary recommendations; suggest refinements to the Super 301 and general National Trade Estimate (NTE) report process; look at the implications of countries and practices not selected; and comment on the Super 301's potential impact on progress in the Uruguay Round. We also will comment briefly on implementation of the Special 301 provisions, the important new tools that we believe will help achieve adequate and effective intellectual property protection for U.S. firms.

Concerning the Super 301's effect on the current MTN Round, let me at the outset strongly endorse the Administration's contention that Super 301's success will "liberalize trade for the benefit of all nations" and aid our Uruguay Round efforts to create in Ambassador Hills' words "an ever-expanding international trading system based upon clear and enforceable rules."

APAA applauds the Administration's determination to add yet a third track towards freer world trade in developing a new approach to reducing Japanese structural impediments to trade.

Like its companion approaches, success in this Structural Impediment Initiative will benefit global trade.

APAA/Industry Background

The Automotive Parts & Accessories Association (APAA) is a trade association representing some 2,000 manufacturers, manufacturers' representatives, wholesalers, distributors, export management companies, and retailers. Our members make and sell the entire spectrum of automotive parts, accessories, tools, equipment, chemicals and supplies.

APAA's 1,000 U.S.-based manufacturing members represent a very significant share of the universe of 2,000 firms cited by USDOC as being engaged primarily or solely in automotive parts and accessories production. Thus, when I speak of APAA as industry's representative, the term refers to this vast number of firms. It does not imply that APAA speaks for every firm in the industry universe nor that APAA is the only group representing America's large and diverse auto parts industry.

According to A Competitive Assessment Of The U.S. Automotive Parts Industry And The U.S. Aftermarket for Japanese Cars And Light Trucks, International Trade Administration, U.S. Department of Commerce, March 1985, "about 50 percent of U.S. parts manufacturers supply both the OE and aftermarket, while the remaining 50 percent supply only the aftermarket."

APAA's membership includes broad representation of both types of firms. For example, our member firms form a substantial contingent of America's leading independent parts makers of all sizes, supplying components for engines, drivetrains, electrical, steering, suspension, all other automotive systems, and the gamut of accessories, for U.S.-based vehicle assembly by U.S. OEM's.

According to the United States International Trade Commission report, U.S. Global Competitiveness: The U.S. Automotive Parts Industry, Investigation No. 332-232, USITC Publication 2037, December 1987, independently owned parts makers produced between 38.0% and 48.0% of total parts shipments between 1982 and 1986.

While we do not know the OE versus aftermarket parts production breakout for either independent or captive parts makers, the USITC report underscores the fact that Big Three auto assembly operations rely on APAA members and other independent parts makers (foreign and domestic) for varying degrees of their OE needs: GM (30%), Ford (50%), and Chrysler (70%). Moreover, USITC reports domestic OEM moves to reduce vertical integration. GM is leading the way, USITC explains, with "plans to increase outsourcing by 10%."

I would submit that America's independent parts makers, APAA members and nonmembers alike, play the predominant role in supplying at least 73% of the value of aftermarket parts sold for domestic nameplate vehicles, as determined by USDOC research.

Parts Industry's Priorities Met Super 301 Criteria

Industrial powers and emerging countries alike have a common commitment to protecting their auto/parts making industries -- be it Mexican and Brazilian content rules or stiff EC car import quotas to name but a few. A table of non-tariff government and industry barriers compiled from U.S. parts makers' responses to the USITC's 1987 investigation of the U.S. parts industry's global competitiveness provides an excellent summary of the leading protectionist tactics (Appendix B).

Since the first NTE was instituted by the 1984 trade act, APAA has worked with USTR and USDOC to ensure that it provide thorough coverage of tariff and nontariff barriers to U.S. automotive products trade. The 1989 NTE was especially important since its preparation was the first step in the Super 301 process. In addition to our regular NTE input, APAA submitted comments as part of the prioritization process.

We identified the practices of six countries: Japan, Canada, Korea, Taiwan, Brazil and Mexcio. Our top tier rankings featured Japan, Canada and Korea.

In emphasizing Japan both in our remarks and in follow-up meetings with the Office of USTR, we reiterated our chief objective: to break the chains binding Japanese car companies and Japanese suppliers to the exclusion of U.S. companies. APAA doggedly has pursued this objective through Market Oriented, Sector Selective (MOSS) talks on auto parts and more than a decade of discussion with U.S. trade leaders.

We also contended that Canada's longstanding automotive policies -- such as vehicle assembly and local content rules -- present the greatest proof that such strings will skew parts procurement and investment away from the entire range of U.S.-based automotive suppliers.

Rounding out our top three was Korea with practices that combine Candian style content rules with government/industry targeting resembling Japan.

Taiwan, Mexico and Brazil, as important emerging auto and parts making nations were cited for a myriad of unfair practices and investment distortions. Past NTE's have discussed these barriers but have not shown U.S. negotiations to be successful in securing their abatement.

Ambassador Hills set four Super 301 selection criteria: (1) the potential to increase exports in the absense of barriers; (2) precedential value in achieving similar reductions elsewhere; (3) the likelihood of success; and, (4) compatibility with America's Uruguay Round objectives.

APAA believes its recommendations measured up to this yardstick in the following key ways:

(1) The potential for significant sales increases should we succeed in loosening Japanese OEM/supplier bonds is enormous. More U.S. parts sales to Japan-based OEM's would spur exports while more U.S. firms' sales to Japanese transplant assemblers would cut Japanese parts imports. These factors working together could shave the automotive products half of our bilateral trade deficit. The following statistics are evidence of the staggering challenge we face in cutting the parts trade deficit with Japan:

-Japan's parts trade surplus increased five-fold between 1982 and 1987 to $7 billion.

-Japanese OEMs' almost total reliance on Japanese suppliers holds U.S. sales to $300 million, less than one third of one percent of Japan's $85 billion market.

-Japan's transplant assemblers in the U.S. source only 25 to 35 percent U.S. value added in parts, a growing share of which is made by Japanese migrant suppliers.

-The true parts trade deficit includes that quarter of Japan's $85 billion parts market devoted to building $24 billion in cars and light truck exports to the U.S.

Indeed, with cars and parts imports totaling one-sixth of the U.S. world trade deficit it also is crucial that Canada, Korea and other automotive producing nations provide reciprocal market access.

(2) By breaking through the shell surrounding Japanese OEM/supplier families to the exclusion of U.S. suppliers, we could establish a significant precedent and send a warning for emerging auto producing nations to steer clear of tight car maker/supplier family ties.

(3) Similarly, by successfully taking on Canada's Trade and Related Investment Measures that now discriminate against the use of U.S.-made parts, we would complement American negotiators'

efforts through GATT to curb the use of TRIM's and other unfair trade and investment distorting practices. The value of the precedent also would be manifest in bilateral trade talks.

(4) As to the likelihood of success, APAA believes that all nations cited depend on continued U.S. market access, giving America the most potent market opening tool. As former Undersecretary Smart said at the August 1986 opening MOSS round, Japanese auto makers who benefited the most from access to the vast U.S. market also stood to lose the most unless Congress saw tangible market opening results. It is a sound maxim to apply in the Uruguay Round and in all bilateral dealings.

For APAA the significant factor is that USTR has initiated the Super 301 program and taken important first steps. While we are disappointed by the omission of the Japanese practices we named, it is significant that Japan at least was selected. While we agree that it is vital to challenge the type of trade and investment distorting practices for which India was selected, APAA would have preferred to include Canada's practices. We do credit USTR for making one important match for our industry in identifying Brazilian import licensing requirements now impeding U.S. cars and parts.

As the Super 301 process evolves APAA believes that Ambassador Hills' criteria effectively should serve as road markers pointing U.S. leaders to a course of action on our industry's trade problems.

Since these early steps will set the direction for the mission, APAA is eager to participate in the process. In light of our industry's $14 billion export volume, and given the economies of scale that production for Japanese and other foreign based auto assembly could provide were these markets open, the potential for parts export growth appears unlimited. Therefore, APAA believes that a course of action that includes automotive products barriers is the only course that will lead to attainment of America's mission objective -- significantly improved U.S. export opportunities.

Recommended Refinements

To ensure that America moves steadfastly towards our free trade objectives, we suggest the following steps to enhance the process for next year's Super 301 exercise as well as for NTE report preparation in subsequent years:

(1) The Super 301 public comment period should commence much earlier next year, and a Federal Register notice and comment period for NTE preparation in subsequent years is strongly recommended. The comment period should last at least two months. The responsible industry sector staff within USTR, and others in the interagency process should seek and incorporate more public comment, supplementing the important, albeit limited, ISAC level participation.

(2) Strong USTR coordination of the interagency process should begin with the publication of key contacts named by each agency at both the staff and policy making levels.

We stress the need for contacts because the process is best served by industry and government knowing one another and exchanging information. It also builds an important element of public accountability into the process.

(3) Industry sector contacts should make preliminary report copy available to all extent possible to interested parties. Material available only to ISAC members should be more easily accessible to members wishing to contribute to the report drafting process. Of course, the aspect of accountability hinges on agencies providing some indication as to the disposition of industry recommendations.

(4) Federal Register notice of interagency hearings should provide all interested parties the opportunity to testify

or participate in a second round of written comments. Through past experience APAA finds the give and take of interagency hearings to be invaluable in gaining the viewpoint of various policy makers. This public airing of issues, unlike the closed ISAC process, stimulates discussion and enhances policy making.

Had an interagency hearing included a representative of the Council of Economic Advisers we may have had the chance to publicly address the misperception that the U.S. limits Japanese car imports. Instead, APAA learned through the attached May 24, 1989 Washington Post article (Appendix C) that on May 21 as the president and his advisers pondered the approaching Super 301 decision, chief economist Michael J. Boskin raised the specter of American hyprocrisy should we name Japan while imposing car and other product quotas on Japan.

Despite the fact that the official bilateral agreement restricting Japanese car exports ended effective March 31, 1985, and despite the Reagan Administration's adamant refusal to credit Japan for unilaterally continuing their "restraint" at a whopping 2.3 million unit level, Japan's incessant harping about quotas has made an impact. High level U.S. officials reportedly have misplaced guilt pangs over the perceived barrier.

The attached excerpt from the February 1989 report of the Advisory Committee for Trade Policy and Negotiations, Analysis of the U.S.-Japan Trade Problem, Appendix D, describes the original 1981 restraint agreement and tells what can go wrong when Japan sets the terms for trade negotiations.

(5) Finally, we believe that when the final selections are made, interagency contacts should provide interested parties with some rationale for excluding major items.

(6) The Congressional hearing review process provides a final and very important safeguard to ensure Administration responsiveness to American industries and workers.

Mr. Chairman, APAA has worked with this Committee and others in Congress to define trade objectives with respect to Japan, Canada and other countries. Administration trade leaders should stand ready to discuss the disposition of these common objectives.

Industry's Case For Citing Japanese Sourcing Practices

Beginning with Japan, I will review major practices which were not identified by USTR yet continue to have tremendous negative ramifications for American industry, workers and the national economy.

Foreign car makers who can secure a significant share of the rich, open U.S. market while protecting their home market from import competition, always enjoy the upper hand in economies of scale and gain a global competitive advantage. For over 10 years and three Administrations America's auto parts industry has warned that this is the case with the Japanese.

APAA consistently has warned of the threat of market erosion for American made original equipment and aftermarket sales. Japanese auto/parts inroads in the U.S. through (1) direct and captive imports bearing little U.S.-made content, (2) transplant assembly using largely Japanese content and (3) greater Japanese-controlled parts in Big Three production could give Japanese auto/parts makers the potential to control between 40% and 50% of the content of all cars sold in America in the 1990's.

APAA similarly has predicted significant downstream erosion for American parts distributors, retailers and importers as they increasingly are displaced by new Japanese controlled sourcing and distribution channels.

U.S. Government Studies Document Japanese Structural Barriers

The structure of Japan's automotive industry long has excluded

U.S. firms from equipping Japanese cars that dominate the world market. The International Trade Commission's December, 1987 report, Global Competitiveness: The U.S. Automotive Parts Industry, (USITC Publication 2037) provides an extensive discussion of the various Japanese industrial groupings, or keiritsus, each of which includes an auto producer, major bank, affiliated parts makers, and other financial and industrial operations.

The fact that keiritsus interweave companies "through equity exchanges, interlocking directorates, intra-group financial commitments, joint R&D efforts, and membership to exclusive management councils or clubs" has the reported, well-known effect of making it "difficult for potential outside suppliers (domestic or foreign) to sell to companies in the group."

While U.S. government and industry experts may characterize Japanese OEM/supplier links in warm and fuzzy terms such as "family ties," the 1987 Japan Economic Almanac, published by Nihon Keizai Shimbun, coldly and clearly portrays Japanese suppliers as "vertically integrated Japanese parts companies." Further, the Almanac explains how tight these ties are, likening Japanese parts producers to "faithful servants of a feudal warrior chief," the automakers.

Parts Procurement Barriers Imported

In its discussion of nontariff trade barriers, the USITC report cites former Commerce Assistant Secretary H.P. Goldfield's testimony that traditional Japanese family-like manufacturer-supplier relationships, and not the Japanese government, pose the primary barrier to U.S. auto parts sales to Japanese OEM's. Explaining that relationships are rooted not only in the Japanese market but also in the transplanted Japanese assembly operations here, Mr. Goldfield noted that these ties "have effectively precluded many U.S. suppliers from participating in this huge, fast-growing market."

Already vulnerable, our industry now faces the prospect of permanent preclusion from the transplant assembler market. Hundreds of Japanese suppliers are moving on-shore. Moving here originally to keep tight ties with Japanese car makers, these companies have set their sights on selling to traditional car making customers, and to cracking the lucrative U.S. aftermarket.

While the falling dollar should have sharpened the competitive edge of American companies seeking transplant sales, in many cases it turned against us by casting the U.S. as an investment bargain for the Japanese. Japanese car companies pass over attractively priced quality U.S. parts for parts from related Japanese supplier plants set up here. And these parts plants, like their car company customers, continue to import capital goods and subcomponents for their assembly operations and thereby contribute to the U.S. trade deficit. Indeed, Japanese automotive investment in the U.S. appears to be increasing, rather than trimming, the trade deficit.

The fact that Japan's direct automotive investment operations in the U.S. do "final assembly, putting together components or subassemblies mainly imported from Japan" is the chief reason for why the transplants here have not created massive unemployment in Japan according to a recent Japan Economic Institute analysis.

American workers must face the worst consequences. Recent projections by USDOC, GAO, and the United Auto Worker Union cite auto making and supplier sector job losses ranging from 100,000 to 500,000 by 1990, attributed largely to growing Japanese market predominance.

As analysts reviewing this month's shocking balance of payment statistics attest, America's standard of living is at stake. Japanese automotive investment here is a heavy contributor to this deteriorating account. Indeed, a Japanese takeover of the American automotive industry would move billions of dollars of U.S. industry profits into foreign hands, while the control of

much of America's industrial base, wealth and jobs moves to foreign lands.

Closed Parts Distribution Web Imported

Japan's closed parts distribution web has joined the closed parts buying system in the U.S. It is getting harder for America's independent aftermarket retailers and service outlets to provide replacement parts to owners of Japanese nameplate cars. Tightly controlled OE producers generally restrict replacement parts sales to the car dealer network only. And, since most U.S. and other independent parts makers do not have the economies of scale that OE sales provide, tool up costs for purely replacement parts production can be prohibitive.

MOSS Initiative Falls Short

Responding to the seemingly impenetrable barriers posed by Japanese industry structure, Mr. Goldfield told the Joint Economic Committee of Congress in April 24, 1986 testimony that "We intend to convince the Japanese vehicle manufacturers that sourcing from U.S. parts producers makes good business sense; and, it has the added advantage of making good political sense."

While the 1986-1987 auto parts Market Oriented, Sector Selective (MOSS) demonstrated the sound economic and political reasons for Japanese OE and replacement parts buyers to purchase products outside of their supplier families, its two overriding goals of gaining U.S. competitors a fair shake at supplying Japanese car building and aftermarket service parts markets were not reached.

Indeed GAO's 1988 report on the conduct of five American MOSS sectors shows automotive parts to be the only sector to experience a decline in exports to Japan in the year following the talks' conclusion. Today, nearly two years after the concluding MOSS round, little U.S. sales progress is evidenced in significantly cracking Japanese parts markets for high value-added components and systems.

Japanese reports crediting billions of dollars in post-MOSS parts purchases from U.S. firms belie the progress made by non-family suppliers in cracking new business. Japan's data mostly reflects Japanese car company purchases from hundreds of Japanese supplier family members relocating in the U.S., ironically perpetuating the same tight bonds that the MOSS negotiations sought to loosen.

USTR Response

The 1989 NTE pronounced this diagnosis of the auto parts trade problem:

> A prerequisite for selling most functional auto parts to Japanese vehicle makers is to become part of their supplier "family." "Nonfamily" suppliers are precluded from both the original equipment and replacement (aftermarket) auto parts markets for Japanese vehicles. The United States is trying to persuade Japanese vehicle manufacturers to increase their purchases of competitive, high quality U.S. auto parts. (Emphasis added.)

While APAA vigorously supports continued, intensified government to government pressure for increased sales, we believe the 1989 language should have incorporated the following strong statement which the USTR made in the 1987 NTE: The "United States is trying to persuade Japanese manufacturers to give fair consideration to competitive, high-quality U.S.-made parts. (Emphasis added.)

APAA sees the statements as complementary, in that it should not be difficult to get Japanese OEM's to increase their purchases of U.S. parts once our industry firms get fair commercial consideration.

With Japanese cars taking increasing shares here and globally, American trade leaders should take very serious note of the USTR's 1989 NTE finding that Japan's automotive industry

structure "precludes," or rules out in advance the use of U.S. OE and aftermarket suppliers.

Yet, the Administration's prescribed regimen as stated in the 1989 NTE offers two post-MOSS tonics which hardly fit the malady diagnosed: Japanese self-monitoring of U.S. parts purchases and greater Japanese government assistance with trade promotion events. Had the MOSS talks spurred significant restructuring of the Japanese procurement system, then Japanese industry monitoring of its purchases and greater Japanese trade promotion efforts could be helpful in sustaining the improving health of our bilateral parts trade relationship.

As subsidiary goals, however, they can support but never substitute for the primary goals of reforming Japanese parts sourcing practices. That these secondary issues continue to be emphasized as America's post-MOSS policy tools attests to the control Japan exerted over the MOSS agenda itself.

Sidestepping America's primary MOSS objectives, Japan cherrypicked lesser items such as trade promotion and sales monitoring from our negotiators' list of objectives. In the case of post-MOSS monitoring five of seven negotiating sessions were mired down by the issue of how Japan would self-monitor.

Rather than crafting a meaningful system that measures the genuine MOSS-related sales improvement of traditionally excluded U.S. firms, the agreed to method is geared to give Japan credit for purchasing from their transplanted traditional suppliers. Therefore, the U.S. effectively is rewarding Japanese OEM's for keeping the same tight structural tethers that MOSS was intended to unleash.

Statutory Tools Should Enhance Negotiating Efforts

Having shared the frustration borne of a decade filled with promise but little serious purchasing performance, Congress has not lost sight of our MOSS goals. They tailored three 1988 trade act provisions that go to the heart of the structural barrier problem.

1) A sense of Congress resolution, adopted during the MOSS talks, calls on U.S. negotiators to overcome unacceptable Japanese barriers to U.S. OE and aftermarket sales, and asserted Congress' intention to judge the success of MOSS by a signigicant increase in U.S. parts sales and a significant increase in the number of long-term sourcing relationships initiated.

2) The APAA-backed Quayle amendment mandates a five-year commitment to an Administration/industry/Congressional MOSS-like Japanese parts market opening initiative.

3) With auto parts in mind, the Represenative Levin/Senator Riegle amendment permits swift S. 301 retaliation against a foreign government's toleration of an unfair practice, rather than against the practice itself.

In pressing for Senate passage of this last provision, Senator Riegle was joined by Senator Wallop. As these sponsors explained, the new provision addresses the problem of "a government which is aware of a private industry's discriminatory activities and does nothing to stop it." (Emphasis added.)

The Senators added that a government's toleration of discriminatory industry practices "is just as damaging to U.S. exports as a direct action by the government." (Emphasis added.)

Based on our industry's experiences with closed procurement practices APAA fully agrees that such private barriers have virtually the same effect as a foreign government's erection of a 100% domestic content wall.

As stated above the USTR's 1987 NTE defined America's overriding objective as one of "trying to persuade Japanese manufacturers to give fair consideration to competitive high-quality U.S.-made

parts." (Emphasis added.) With the new Riegle/Levin provision the U.S. now may signal Japan and other foreign governments that they will be held accountable for the lack of fair commercial consideration for U.S. products.

To begin putting these statutory tools to work at prying open Japanese parts markets we believe the Administration should promptly form the new auto parts industry advisory committee. Directed by the Quayle amendment this committee is to help the Commerce Secretary shape an initiative to open Japanese parts markets in the U.S. and Japan.

Due to the lack of USDOC initiative to date 10% of the program's five year life has been lost and many market opening opportunities missed. APAA fears that those Japanese industry and government leaders who originally chafed at the continued political pressure brought to bear by the Quayle amendment now may question the seriousness of U.S. market opening intentions.

Moreover, the Administration's development of a shadow monitoring system to provide our own gauge of American firms' post-MOSS sales progress is hanging fire until the committee is in place.

APAA believes that the implementation of a solid initiative and the ongoing MOSS follow-up talks should dovetail and bolster one another. The success of both efforts is to be judged by Congress who have resolved that significant new sales opportunities must be opened for U.S. parts firms.

APAA also applauds the novel Structural Impediment Initiative, which is to be chaired by USTR and includes the secretaries of Treasury and State. We see this effort as a vital separate approach to tackle the goals of structural change in Japanese parts procurement practices, goals that heretofore have eluded the MOSS process.

APAA also feels that this new initiative has tremendous potential to reinvigorate the remaining years of post-MOSS bilateral negotiations, and to redirect those discussions to overcoming private industry barriers.

Our potent new weapon for attacking foreign government toleration of anticompetitive private practices should fortify the new initiative as well as enhance all aspects of the Quayle initiative and the post-MOSS bilateral talks.

Canada

Under their FTA maintained unilateral protectionism, Canada has carved out vehicle assembly and content shares, hoping to escape the ravages of an onslaught of car and parts imports.

In addition to providing unrivaled federal and provincial investment bounty Canadian policies provide two key reasons for foreign owned parts makers to invest there and gain a decided advantage over U.S.-based suppliers:

(1) Qualification as a Canadian-made part gives a preference, because Auto Pact savings are tied to Canadian parts purchases. (2) Similar duty remission benefits granted to Japanese and Korean transplants are contingent on use of Canadian parts.

By rewarding Big Three (Auto Pact) members and foreign owned transplant car makers for basing vehicle assembly in Canada and using Canadian made parts, Canada has approximated its industry's goal of universal content and production rules. In a 1986 report to Parliament (Appendix E) Canadian industry leaders forecast significant 1990 trade gains against the U.S. should they attain their universal content goal:

-Although vehicle imports into North America would rise to 28 percent, "primarily because of the unrestricted U.S. market," Canadian value added requirements would prevent increased imports from having "significant negative impact in Canada." (Emphasis added.)

-Thanks to "the value added requirements and because the additional investment by offshore producers would stimulate increased Canadian auto parts production that might feed U.S. plants," Canadian auto industry would outperform the U.S. industry.

Recommendations

Key provisions of our FTA legislation require swift action:

(1) Study of the Auto Pact rules' impact, and proposed reforms.

(2) A fresh approach to correct trade distorting production based duty remission programs. In March 2 testimony, Ambassador Hills promised to study the production-based remission program and its consequences for U.S. based suppliers. We await her report.

Close Monitoring of Korea Urged

By linking Korean fears of being named to their recent trade liberalization moves, Ambassador Hills underscores a key strength of Super 301, its deterrent effect. We have commended ROK's recent plans to liberalize parts trade by lifting import license restrictions and slashing parts and car duties. But we must caution that these moves will mean little to our long term objectives if the overriding thrust of Korean automotive parts trade policy is an aggressive parts localization program.

The stakes for America's independent parts makers are very high indeed when one considers the truest measure of our parts trade deficit with Korea. As early as 1986, one-sixth of ROK's largely exclusive $2.3 billion domestic parts market was devoted to building 100,000 car exports to the U.S., and another one-third equipped cars destined for third markets. Since then car shipments to the U.S. have more than trebled.

USITC reports that "about 1,800 auto parts and components (estimated value at $1.1 billion) that are currently imported will be localized during 1987-91." Indeed, in 1988 Duck-Soo Han, the key Ministry automotive industry official told Automotive News that "Absolute reduction in the level of the import bill will not be significant, but at the present stage it may be meaningful because there has been no year when requirements for imports have been reduced."

It would appear that Korea has turned the corner and is heading down the home stretch towards attaining localization goals. The impact of recent ROK automotive trade distortions, noted in Appendix B, compels our continued watchfulness. Bilateral progress towards long-term reform of Korean TRIM's and other non-tariff impediments will enhance our important bilateral trade relationship. The results of these efforts should form the basis for whether or not Korea is named in the 1990 Super 301 process.

Impact on Uruguay Round

Strong GATT rules for all players coupled with firm, frequent bilateral talks that continue well beyond Super 301 are crucial. APAA believes this is a sound strategy for meeting our industry's top objectives: (1) ultimate dismantling of foreign impediments to American OE sales and (2) access to the global aftermarket.

Special 301 Provision

Two key APAA objectives, a global accord and tough bilateral negotiations with piracy havens, are within reach thanks to Special 301 and Ambassador Hills' swift, thorough implementation. Those nations that are indifferent to the plundering of U.S. intellectual property rights, sales, jobs and R&D should take action to reform their systems or face certain U.S. retaliation.

In closing, APAA stands ready to work with your committee, and to support Ambassador Hills and other Administration leaders in advancing free trade on three tracks: Super 301 related bilaterals, the Uruguay Round, and the new Structural Impediments Initiative to improve our relationship with Japan.

[APPENDICES TO THIS STATEMENT ARE BEING RETAINED IN THE COMMITTEE FILES.]

INDIA, UNFAIR TRADE AND HUMAN RIGHTS

STATEMENT OF

DR. GURMIT SINGH AULAKH
PRESIDENT
COUNCIL OF KHALISTAN

for the

SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

JUNE 8, 1989

This material is circulated by the Council of Khalistan, 2025 I St. NW, Washington, D.C., 20006, which is registered with the Dept. of Justice, Wash., D.C. under the foreign agents registration act as an agent of the Council of Khalistan, The Golden Temple, Amritsar, Punjab. The material is filed with the Dept. of Justice where the registration is available for public inspection. Registration does not indicate approval of the contents of the material by the U.S. Government.

INDIA, UNFAIR TRADE AND HUMAN RIGHTS

Mr. Chairman, Members of the Subcommittee on Trade, Ladies and Gentlemen, many trade experts have and will appear before this Committee to testify on unfair trade practices, including those of India, specifically in the areas of patent violations by India, the Indian ban on U.S. insurance services and the restraint of U.S. investment in India.

I might point out before delving into the heart of my testimony, that in both the case of India's restraint of U.S. investment and in the case of banning the sale of insurance by U.S. firms, the people of India are the losers.

As the Office of the U.S.Trade Representative points out, India shuts out American companies by first requiring government approval of all new or expanded investment and, then, by requiring U.S. firms to "use locally produced goods in the items they produce in India, rather than allowing them to import the best quality and most cost-effective products."

Obviously, this is a restraint of competition and it means that India citizens have to be satisfied with inferior-quality products, with at least some inferior components. There is no incentive then for the Indian business community to use its ingenuity to create competitive products and services. At the heart of the matter is the Indian government's desire to exercise state-control of the economy.

In the case of the insurance industry, once again we see a state monopoly on the sale of both general insurance and life insurance. What, I ask this Subcommittee, is the purpose of restricting Indian citizens to the purchase of one state-controlled form of insurance? Again, we see here the serving of the state at the expense of the people of India. Everybody needs insurance. So this becomes a very lucrative source of revenue for the Indian government and if the insurance policies the state offers do not suit the citizen, there is no recourse to Prudential, Blue Cross, Travellers, State Farm or any of the scores of U.S. insurance companies available to Americans. That would be an intolerable situation here and it is no less liked in India, I can assure you.

This hearing is of great interest to me, though I am not a trade expert, and to the community I represent, the Sikh independence movement worldwide, because, a bi-partisan bill to censure India's trade relationship with the U.S. has already been introduced in the House of Representatives with the purpose of securing human rights for the Sikhs in India.

This bill, H.R. 1067, introduced by Congressmen Wally Herger and Tony Coehlo, with a total of 36 co-sponsors to date, calls for India's most-favored-nation status with the U.S. to be rescinded until such time as Sikh political prisoners are released from jail, where they have languished five years without trial or legal counsel, and until such time as international human rights monitoring groups, like Amnesty International and Asia Watch, are allowed to travel freely into the Punjab, the Sikh homeland, to investigate human rights violations.

These violations have become extremely serious. We believe we are completely justified in saying that the killing of Sikhs in India through police action, by paramilitary forces and through government-provoked mob violence long ago reached the level of genocide. We estimate that over 80,000 Sikhs - and this includes men, women and children - have been slaughtered by these methods since the attack on the Sikh's most revered religious

shrine, the Golden Temple of Amritsar, in 1984.

What is true domestically, has also been the case in India's foreign policy, prompting the Washington Post to run an article last January 1, titled: "India - Bully of the Orient? : In New Delhi, National Security Means Invading Your Neighbors." The Post article, by correspondent Ben Barber, recounts Indian covert and overt military operations in Sri Lanka, Nepal, Bangladesh, Pakistan, Sikkim and Bhutan.

Just yesterday the BBC in London reported that Indian Prime Minister Rajiv Gandhi has announced that 50,000 Indian troops will not be removed from Sri Lanka. In addition, India is still enforcing a trade blockade of tiny Nepal to the north, cutting off vital supplies, like gasoline fuels. As Ben Barber wrote in The Washington Post: "And now he [Rajiv Gandhi] is paying the price for his mother's intrigues in the Punjab, Sri Lanka and now the Maldives [islands off southwest coast of India], essentially a spin-off of the Sri Lanka mess."

Incidently, the "Sri Lanka mess" he refers to was created by India when she trained the Tamil guerrillas there and outfitted them with arms. The same Indian-trained Tamils were sent to the Maldives as mercenaries t overthrow the government there. However, within hours, 1500 Indian soldiers were airlifted to crush the made-in-India rebellion. This is sheer Machiavellian evil and disregard for life.

The Human Rights Picture in the Punjab

It is my duty as an American citizen, and as a Sikh, to inform this Committee that India has not only restrained fair trade with the United States; has not only committed aggressions against its neighbors; has not only escalated the nuclear arms race on the Indo-Pakistan subcontinent and begun to build the H-bomb, as Congress recently heard in CIA Director William Webster's testimony, but India is also restraining the rights of its own population and persecuting one of its most productive minorities, the Sikhs and their religion.

As I mentioned, Amnesty International and other such human rights groups are banned from reporting on the human rights situation inside the Punjab. However, there are very courageous people inside India who are documenting human rights crimes there. One of these is a group, based in New Delhi, called The Committee for Information and Initiative in Punjab (hereafter referred to as CIIP). This group, I should mention, is composed of Hindu membership. They are not Sikhs by religion or birth. They are simply concerned Indian citizens and, I would say, have risked bringing down government harassment on their own heads by issuing these reports, copies of which I submit for review by your Subcommittee.

In a recent investigation done by CIIP, in February of 1989, entitled: "SSP [that is, Senior Superintendent of Police] Govind Ram: The Terror in Batala," we have a veritable case study of the sadistic practices of the police in the Punjab used against the Sikhs to demoralize them as a people and, if left unchecked, to wipe them out as a culture and a religion. In this account, we read of a whole local population terrorized by this police chief, Govind Ram, and his police.

In one case, Govind Ram rounded up all the Sikh males of several neighboring villages, harangued them, accused them of harboring terrorists and their women of co-habiting with terrorists. He ordered all the young men to fall on their bellies and then hundreds of police beat them for the next hour with leather belts, batons and bamboo poles.

Finished with this, Govind Ram forced the assembly to curse a lady Sikh political leader, being held in jail without trial or counsel, and her family. He threatened to make the jailed woman,

Surjit Kaur, and her daughters dance naked before a similar assembly, if she ever got out of jail. Before he and his forces departed, Ram threatened to beat up all the women of these assembled villages on his next visit.

This is far from the end of the Govind Ram story. This same police chief's forces have tortured Sikhs through such abominable practices as arresting a brother and a sister and then forcing the brother to not only beat up the sister, but also to have intercourse with her in the jail.

His police have arrested the two young daughters of the aforementioned Surjit Kaur, aged 10 and 15. Both of them were raped and sexually molested in the police station. Their father, a farmer, is regularly picked up by police and tortured and then let go.

Routine torture of civilians, apparently for the purpose of sheer intimidation, is common in this jurisdiction of Govind Ram, according to the CIIP report. Individuals as elderly as ninety years old have been taken into custody and beaten up by Ram's police. This particular report opens with a visit to a primary school in Batala, Gurudaspur District, where children are lodged and educated, whose fathers have been killed by police in "faked [armed] encounters."

These staged "encounters" are described at some length in an earlier investigative report by CIIP, called "State Terrorism in Punjab 1988." The report is preceded by an explanation of how previously illegal acts have now become legitimized by the Indian government in so-called anti-terrorist legislation enacted since 1984.

India's "Terrorist Laws": an Excuse for Lawlessness

This legislation allows police to arrest people for simply protesting any government practice or for any speaking or writing "which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty or territorial integrity of India." What would be guaranteed here in the United States, under the U.S. Bill of Rights as free speech, is a criminal act in India.

Likewise, this legislation includes in its definition of a "terrorist" anyone who "alienate(s) any section of the people" or who "adversely affect(s) the harmony amongst different sections of the people." Under this broad a definition, almost anyone could be arrested as a "terrorist" and many Sikhs are arrested under legal cover of just such vague notions of law. These are not in truth "laws," but rather lawless Orwellian devices for suppressing whatever a government, clearly out of control, wants to suppress.

Murder by "Faked Encounter"

"State Terrorism in Punjab" is filled with examples of unlawful arrest, torture and murder via the "faked [armed] encounter" with police. These encounters usually follow arrest and interrogation of Sikh suspects, very often young men in their early 20's and even teenagers. Their bodies are found with a gun planted beside it and there are often marks of extensive torture on their corpses. Sometimes the bodies are cremated to eliminate the evidence of torture.

Amnesty International reported just this kind of case last March, working with local human rights groups and sources inside the Punjab. The victim was Rajinder Pal Singh Gill, an assistant professor of horticulture at Punjab Agricultural University. He was arrested on January 25 and disappeared into police custody, his whereabouts unknown to friends or family, who frantically searched for him. They had reason to be frantic. Thousands of Sikhs have turned up dead under just such circumstances.

And that is what happened to Rajinder Gill too. On February 8, the Punjab and Haryana High Courts ordered the police to produce Rajinder in court on February 8. Finally, on February 15, the police chief of Ludhiana announced that Mr. Gill had been killed "in an encounter" with police. The corpse was not handed over to relatives, but cremated by police.

Mr. Gill was seen by several witnesses at the Ludhiana police station before he turned up missing. He repeatedly had expressed fears to friends and family that he might be arrested and tortured by police. Police arrested him in Chandigarh, apparently on suspicion of "harboring terrorists."

Here again we see how the "anti-terrorist laws" of India are used to terrorize civilians. Police had threatened Gill with death in a faked "armed encounter" several months before he actually died. Local human rights groups investigating the case are convinced that Gill was deliberately killed in a staged shootout with police.

Amnesty International is pressing the Indian government for a full and impartial investigation of the alleged murder of Mr. Gill by police officials.

Methods of Torture

Torture methods reviewed in the study on "State Terrorism in Punjab" by CIIP are reminiscent of the Medieval methods of the Inquisition. Sikh victims have, in fact, experienced a variation of torture on the rack, in which police grasp either leg and pull the legs apart until the pelvis rips. Another popular torture method of Punjab police - applied to both men and women- consists of sitting the victim on the ground and putting a large log on their thighs while one or two police sit or stand on the log, while others rotate it. This puts intense pressure on the nerves and ruptures the leg muscles.

Rape of young Sikh women and even girls by Punjab police is also extensively documented by CIIP, the People's Union for Democratic Rights, Citizens for Democracy and several local news accounts. One of the most outrageous of these is the case of Gurmit Kaur, reported in the May 18, 1989, issue of a weekly Punjabi newspaper, the Chardi Kala.

Miss Kaur is a seventeen-year old Sikh girl. She was arrested along with her mother and sister after talking to local reporters about her father and brother, who have been incarcerated two years without trial or counsel.

Accused of harboring Sikh militants, Gurmit was tortured, raped and beaten repeatedly over a two-period by policemen of the Kathunangal Police Station in Amritsar. After being asked to review several suspects at the jail and telling police she knew none of them, she was blindfolded and beaten with belts. Then the police hung her upside down after putting chili powder and fertilizer in her eyes.

That night five drunken policemen came into her room, blindfolded her again, stripped her and then gang-raped her for two hours while she screamed for help. Finally she passed out and woke up naked.

The next morning she was hung upside down again. That afternoon in an open police courtyard, police stripped her, beat her and raped her repeatedly and mercilessly once again. She was laid out naked in the police yard that evening, where several passers-by saw her. After her release, she had to be hospitalized for several days. Reporters noted, in interviewing her after this atrocity, that she had human teeth marks all over her face and body.

Sexual assaults of this kind are a matter of great shame in the Punjab and many women would rather suffer such a crime silently than have the details exposed in public. This girl had the great courage to report it and name her rapists. This assault is by no means an isolated example. Citizens for Democracy, an indigenous human rights group in India, reports that Sikh women are abducted by police, sexually assaulted in jail and often held up to a month at a time.

Crimes against teenagers and children like this are designed to terrorize the Sikh population. The hope is that the adults and parents will roll over and submit to oppression in the fear that, if they don't, their innocent children will be molested or killed.

It is an outrage against God and man that, by means of India's loosely-worded, so-called "anti-terrorist laws," the real terrorists and sadists have emerged from the woodwork of police stations and army units to commit acts of real terror against Sikh families - and are being allowed to get away with it.

It is these very same human rights crimes and this kind of persecution that impelled the Sikhs to formally declare their independence from India and to sever relations with the Indian constitution, effective October 7, 1987, so declared in Amritsar, scene of the Golden Temple massacre of Sikhs and desecration of their holiest shrine. It is not well known in the West, but not only the Golden Temple came under attack in June of 1984. Over 30 other sacred temples were attacked simultaneously in the Punjab by Indian paramilitary forces in "Operation Bluestar."

Indian Police Official Blows the Whistle on Genocide

Nor is it well known that a high Sikh police official, Sardar Simranjit Singh Mann, Group Commandant for industrial security in Bombay, in his letter of resignation to the President of India on June 18, 1984, exposed the Golden Temple assault and its attendant terror campaign as genocide. Said Mr. Mann to the President: "Since you are Supreme Commander of the armed forces, it is my duty to inform you that Sikhs with a few weapons [such as those at the Golden Temple had], which only a platoon in an Infantry battalion has, cannot wage a war against the Government of India, and attacking them with such ferocity has only made our worse fears come true that the Government of India is bent on committing the genocide of the Sikhs."

". . . The [Indian] Army has already killed well over 20,000 of our [Sikh] youth and the whereabouts of over 50,000 are not known. Your Prime Minister [Indira Gandhi] and her Generals are pursuing a policy that has already made Gen. Dyer [the British general who slaughtered 2000 Indian civilians in 1919 at Jallianwalla Bagh] look mild by comparison."

In a subsequent letter of July 2, 1984, he recounted the summary execution of 100 Sikh children, aged eight to twelve, religious students, who were lined up around the perimeter of the Golden Temple and shot one by one by Indian soldiers as they refused to renounce "Khalistan," the ideal of an independent, Sikh spiritual homeland. It is worth noting that, after exposing government-inspired genocide against the Sikhs, Group Commandant Mann himself is now in jail, to insure that he will not be able to speak out anymore against the mass murder and oppression of Sikhs.

Conclusion

Guarantees of basic human rights, the "pursuit of life, liberty and happiness" have always been American considerations in granting trading privileges to other nations. The Jackson Amendment restrictions on trade with the U.S.S.R. is a case in point. I assure this committee that this should be no less a consideration in America's commercial and trade relations with

India.

Religious liberty and the rights of free speech, press and assembly were what the Early Americans came here seeking. The United States should certainly demand such rights be granted to the Sikh religious minority in India, a nation often erroneously referred to as the world's "largest democracy." Before India is allowed to enjoy access to the world's greatest commercial market in the United States, she should be made to live up to that "largest democracy" title and grant freedom to the Sikh people.

Make no mistake, gentlemen. It is surely the intention of the Indian government to eradicate the Sikh religion - by genocide, by intimidation, by humiliation. Their goal is ultimately to force the Sikhs to submit to a tyrannical Indian regime and, having accomplished that, to simply liquidate the Sikhs as a people.

However, I can assure you all that the Sikhs have never submitted to oppression, let alone extermination, and they are not about to do so now. We already have a state of civil war in the Punjab. Sikhs, more than anyone, would choose to avoid bloodshed. Faced with tyranny, on the other hand, they will fight to the last man.

Sikhs are a deeply religious people. Their faith is the heart of their culture. They are hard-working and their "track record" for productivity and industry is well-known throughout India. They share American values and are natural allies of the United States.

They are fighting for their freedom in the Punjab and they need the help of America. It is also in the national security interest of the United States to have such a strong and faithful ally on the Indo-Pakistan subcontinent.

Please keep us in your minds and hearts as you deliberate the issues of India's unfair trade practices toward the United States. Sikhs know all about "unfair" treatment by India's government. Let us join together to redress these grievances and make India accountable for her unjust treatment of nations and peoples.

- Dr. G.S. Aulakh

[TWO OF THE ATTACHMENTS TO THIS STATEMENT ARE BEING RETAINED IN THE COMMITTEE FILES.]

THE NEW YORK TIMES, WEDNESDAY, MAY 31, 1989

Letters

Indian Troops Also Torture Sikhs in Punjab

To the Editor:

Two human-rights reports describe beatings, torture and killings of Tamil-speaking civilians by Indian peace-keeping troops in Sri Lanka (news story, May 17). Indian security forces are practicing the same kind of torture, and worse, against Sikhs in the Punjab region of India.

The Committee for Information and Initiative on Punjab, an Indian human rights group based in New Delhi and administered by Hindus, not Sikhs, has recently released "State Terrorism in the Punjab" and a second study on the the sadistic practices of the senior superintendent of police in Batala village.

These studies describe recurrent cases of torture by beatings, by electric shock to the genitals, by suspending victims from the ceiling while beating them, rolling heavy logs over the legs of women till muscles rupture, stuffing irritating agents like chili up the anus.

There are unrelenting cases of "armed encounters," staged by Indian police and security forces to cover up murders of young Sikh men — some who died during torture, some shot, unarmed, in the street, most killed in secluded areas. Amnesty International, banned from the Punjab by Rajiv Gandhi, has reported on these faked encounters, leaked to them by human rights sources in the Punjab and too numerous to be discounted.

There have been many cases of rape and sexual humiliation of Sikh women, some as young as 10 years old, reported by the Committee for Information and Initiative. The Chandigarh Tribune in Punjab reported on May 1 the torture and abuse of two Sikh sisters, 18 and 21 years old, as well as their mother, by local police in Batala.

Torture of the Sikh population by Indian police and security forces is more severe than the torture you report in Sri Lanka and has occurred since 1984. We urge you to report on it.

GURMIT SINGH AULAKH

Washington, May 18, 1989

The writer is president of the Council of Khalistan, a Sikh organization.

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The Charhdi Kala
Punjabi Weekly Newspaper

17 Years Teenager Sikh Girl

Grangraped at Police Station

A resident of village Leharka Gurmit Kaur has said in a public statement that she was blindfolded stripped off her clothes and sexually assaulted by Police of Kathunangal Police station in Amritsar.She was speaking to the press reporters in the district court after she had seen her father S. Swaran Singh and brother loged in Jail Since two years.Under charges of sheltering Sikh freedom fighters.Student of grade Ten was pale with bandages on her body when she was relating the story of her misery.

On April 21,1989 when she went to their farm with her mother and Sister police took into custody. After Interrogration. They were let free in the evening. Next day she was again arrested and took to village Thiriyewal for identification of few persons. She said she knew none of the persons. Then her sister was released and she was separated from her mother and then blindfolded and beaten up with belts. Powdered chillies and fertilizer was put in to her eyes and was hung upside down.

Gurmit Kaur said that drunken Policemen entered her room between 9 and 10 P.M. raped her after blindfolding and removing all her clothes.For two hours she suffered and cried for help but nobody rescued.So she fainted and found herself stark naked when she came to senses.

On April 23rd at 8 A.M. she again fainted when hung upside down, Later in midday summer heat she was stripped beaten and Raped repeatedly and was laid out naked in Police station yard in the evening many passers by saw her.

Gurmit Kaur told that after her release from Police station she had to stay in Thiriyewal Hospital for many days.

It May be recalled that since the spearheading against the present Sikh movement in April 1978 (by the neo-Nirankaries) atrocities like that against Gurmit Kaur have not come to light when the baptized Sikh Gurmit Kaur was relating her tale of woes to the reporters tears flew even from the eyes of legal professionals there. Bite marks infected by the teenth of cruel policemen were still visible on her face and body. Her face was blushed with insult and anger and said "I will personally avenge this injustice as a true daughter of my Guru who had said that when morality and honour are at stake the use of arms is inevitable."

WHO ARE THE TERRORIST ?

Is it the peace loving peasants or police in the Punjab? Where statements are written later on blank papers signed coercion threats of life and tor ture. Teenagers are subjected to In human treatment to get in criminating statement from Innocent people who are held responsible for alleged actions of their relatives.

Canadians who may or may not have read the news of Balkar Singh ontario will please read the above news published in Indian Newspapers like The Tribune based on the press conference held in District courts Amritsar. This has also been noted by Punjab Human rights Commission.

Translation From Panjabi News Paper

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THE TRIBUNE, CHANDIGARH, PANJAB
MAY 1, 1989. PAGE 1

Widow Surjit Kaur (third from right) and her children who were tortured by a police party at Butala village.

Women face police wrath

From Ramesh Vinayak

AMRITSAR, April 30 – An aged widow, Surjit Kaur, and her two daughters Savinder Kaur (21) and Narinder Kaur (18) – were beaten up and tortured by a police party headed by the SHO of the Beas police station at Butala village.

Although more than a week has elapsed since the incident, the family is in a state of shock.

When this correspondent went to the village, none of the victims would come forward to narrate the event after much cajoling by a group of villagers. Savinder Kaur and Narinder Kaur mustered courage to speak.

The two sisters, who still found it difficult to stand, broke down occasionally. The family has no adult male member. The father, Sohan Singh, died of cancer three months ago leaving behind four daughters and two sons aged six and nine.

Savinder Kaur, who is a matriculate, said on the evening of April 20, a number of policemen and CRPF jawans surrounded their house. Six policemen entered the house and dragged out the women in the courtyard. While they spared the boys and the eldest daughter, Paramjit Kaur, who has been bed-ridden ever since she donated blood to save her father, they beat up the mother and Savinder Kaur and Narinder Kaur charging them with harbouring terrorists. The mother was spared after a sound bashing.

"We were partly unconscious when we were made to lie prostrate on the ground. A heavy log was placed on our legs with two policemen pressing heavily on it before we fainted", recalled Savinder Kaur with tears in her eyes.

"After we regained consciousness, the policemen sprinkled salt in our eyes. All pleadings by our elder sister in bed to have mercy were greeted with filthiest abuses from the cops", said Narinder Kaur.

After two hours of torture, the two sisters were put into a police vehicle and taken to the Beas police station. There they were again questioned by the police which kept accusing them of sheltering terrorists Balwinder Singh Shapur, Harbhajan Singh, Satnam Singh and Khajan Singh.

As news about their arrest reached the village sarpanch, Mr Gurdeep Singh, accompanied by the panches and village elders, he reached the police station and pleaded for their release. The constables on duty not only refused to listen to them but also accused them of defending the girls, who they said, had "illicit" relationship with terrorists.

The girls release could not be secured as the police officials were away to the Jandiala police station to celebrate the promotion of their colleague. The following day, the village leaders approached the officials concerned who agreed to release the girls on the condition that the family immediately abandoned the farmhouse on the outskirts and shifted to the village.

The Majitha police district chief, Mr G.S. Mann, when contacted, feigned ignorance about the incident.

In another incident, Kuljit Kaur wife of Khajan Singh of Sattowal village, was arrested some time back. She was rounded up on April 19 and tortured at the Menta police station throughout the night. On intervention by villagers, she was let off and has since been staying with her parents.

A woman of Dharde village was meted out a similar treatment last week on the suspicion of harbouring terrorists.

Many villagers allege that the youth are time and again arrested and tortured and then let go after payment of bribe. The bribes paid vary from Rs 10,000 and above.

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WRITTEN STATEMENT OF THE

NATIONAL FOREST PRODUCTS ASSOCIATION

Before the

SUBCOMMITTEE ON TRADE

COMMITTEE ON WAYS AND MEANS

HEARING ON THE USTR'S DESIGNATION OF
PRIORITY PRACTICES AND COUNTRIES UNDER SUPER 301

June 8, 1989

On May 25, the U.S. Trade Representative identified Japan's technical barriers to wood products trade as a Super 301 priority practice for trade liberalization. The National Forest Products Association fully supports that decision.

The U.S. wood products industry is the world's most efficient; the U.S. industry is far more cost competitive than the Japanese industry. Nonetheless, barriers to the Japanese market, intended to protect the relatively inefficient Japanese industry, impede imports from the United States, increase the cost of wood products to the Japanese consumer and depress demand for wood products.

Without these barriers, U.S. exports of processed wood products could increase by between $1 and $2 billion annually. Tens of thousands of U.S. jobs would be created. This is, and should be, a U.S. trade priority.

The Japanese barriers are numerous and include:

-- **Technical Barriers/Standards**: the topic of the Super 301 designation and mandatory initiation of a Section 301 investigation:

a) **standards and building and fire code restrictions**: use of discriminatory and outdated tests inhibiting wood products imports and usage without technical justification (for example, restrictions on use of OSB, discriminatory nail standards for panels and limits on government financing and certification of 2x4 housing),

b) **tariff misclassification**: resulting in some wood products being assessed unduly high tariffs,

-- **Subsidies**: to keep otherwise uncompetitive log harvesting and lumber, plywood and millwork operations in business (these subsidies are being used to some extent to shift production toward new products such as laminates and non-plywood structural panels),

-- **Tariff Escalation**: normally used by less developed countries to protect infant industries, resulting in effective rates of protection on processed wood products much higher than nominal tariffs (effective tariffs are highest on processed lumber and panels),

-- **Anticompetitive Activities**: such as the toleration of cartel activity which inhibits import competition,

-- **Distribution System**: which costs imports more than domestic wood products and which inhibits consumption,

-- **Discriminatory Government Procurement**: for some wood products, and

-- **Land/Housing Policies**: such as land policies protecting inefficient land use, resulting in skyrocketing real estate costs, inhibiting home building and the use of wood in homes (i.e. homes which require imported materials).

The existence of these serious barriers was recently documented in the Commerce Department's 1989 study entitled The Japanese Solid Wood Products Market: Profile and Outlook.

It should be stressed that the U.S. wood products industry is not an uncompetitive industry seeking protection. Rather, this very competitive industry is seeking elimination of Japan's protection for its uncompetitive firms so that our comparative advantage can bear fruit.

For example, the Commerce Department study found that Japanese sawmill costs, on a per volume basis, exceed U.S. costs by about 150% to 200%. Japanese plywood production costs exceed U.S. costs by about 110%. While simple cost comparisons do not account for all of the intricacies of competition in the Japanese market, there is little question that U.S. mills are very cost competitive in Japan. With free access, U.S. mills would sell more products. As the respected industry publication Random Length Export concluded, U.S. and Canadian mills have "cost advantages over Japanese mills sawing imported North American logs [which are cheaper than domestic Japanese logs]. The dif-

ference in production costs is substantial enough that the recent rebound in the U.S. and Canadian dollars has had little effect."

Despite the relative uncompetitiveness of the Japanese industry, on a percentage basis, Japan imports far less wood products than its timber resource would justify and far fewer processed wood products than other nations. See attached charts. In addition, despite the Japanese people's preference for wood products, Japanese consumption of wood products on a per capita or a per dollar of GNP basis tends to be much lower than in Europe or North America.

In simple terms, the U.S. industry is more efficient than the Japanese industry, our industry has the comparative advantage, but these market distortions constrain wood products exports to Japan and consumption in Japan. Thus, opening the Japanese market under Super 301 would benefit both the U.S. industry and the Japanese consumer. With free access for U.S. wood products, Japanese consumers would face markedly lower consumer prices and increased availability of wood products. This is precisely the type of practice which U.S. trade policy should seek to address -- market opening initiatives where both countries can benefit from a more efficient operation of the market.

With respect to the Administration's specific designation of Japan's technical barriers/standards as a trade liberalization priority, NFPA has stressed to the Administration the need to address Japanese market access in a coordinated fashion. Eliminating one or several formal barriers in a system protected by an interconnected web of barriers may not be effective at market liberalization.

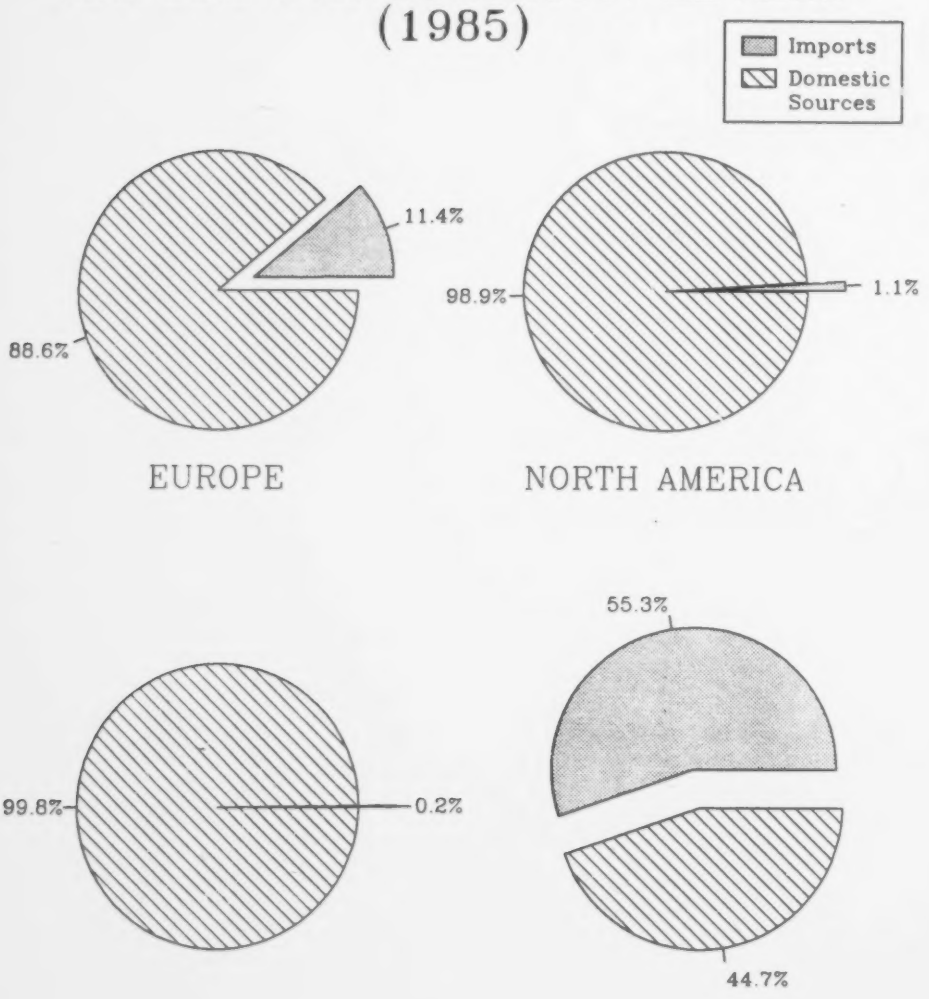
Thus, in addition to self-initiating action under Super 301 against Japan's technical barriers/standards (JAS, JIS, building and fire codes, and tariff misclassification), USTR should initiate an investigation of the wood products subsidies identified in the Commerce Department study of Japan's wood products market. The ensuing negotiations should also address the other factors which protect Japan's wood products market, such as tariff escalation and discriminatory government procurement.

Finally, in developing the Structural Impediments Initiative which the Administration undertook in conjunction with the Super 301 designation, the Administration should seek liberalization of Japan's anticompetitive wood products industry practices, the antiquated wood products distribution system and Japan's land and housing policies, which are perhaps the largest drag on increasing Japanese consumption and imports. Each of these market opening tools are important and necessary parts of a program to open effectively Japan's wood products market.

With an integrated approach to these negotiations, and an Administration commitment to address effectively the full breadth of barriers which effectively impede access to Japan's wood products market, NFPA is confident that the upcoming negotiations can be a successful mechanism to open Japan's market, increase imports and consumption of wood products in Japan, and improve the Japanese consumer's standard of living.

CHART 1

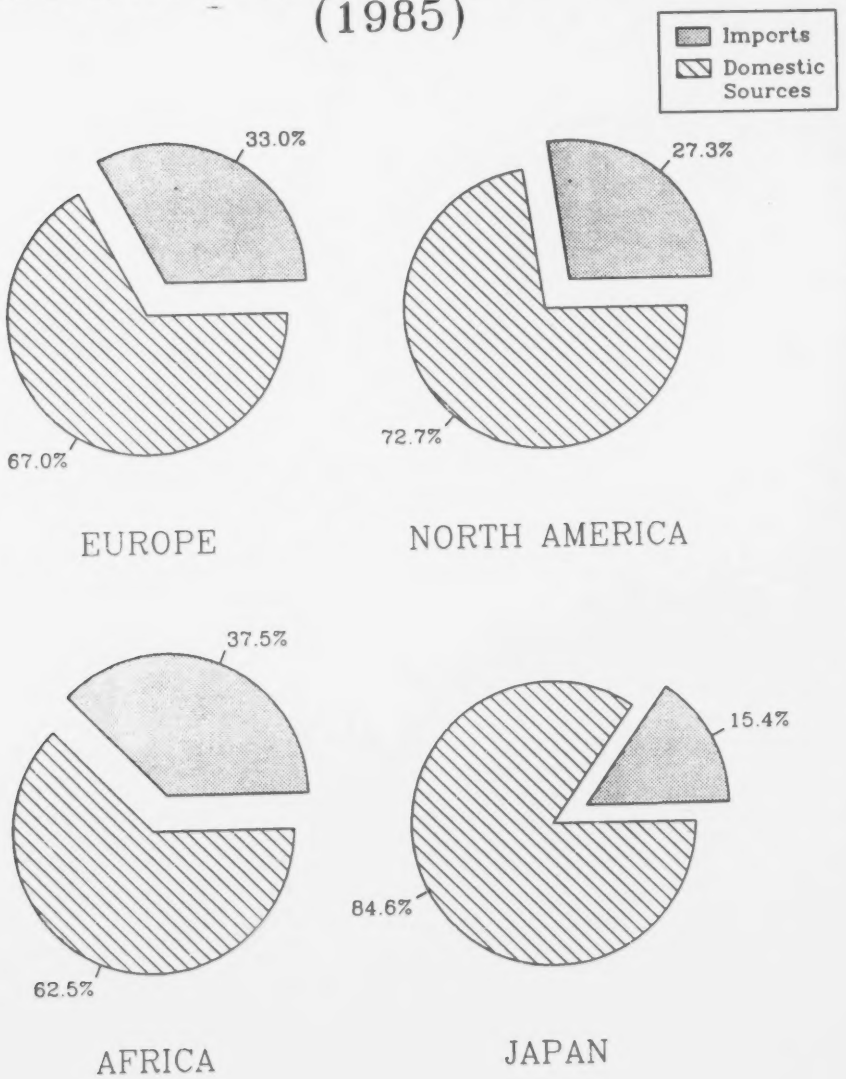
LOG MARKETS
IMPORT PENETRATION LEVELS
(1985)



Source: FAO

CHART 2

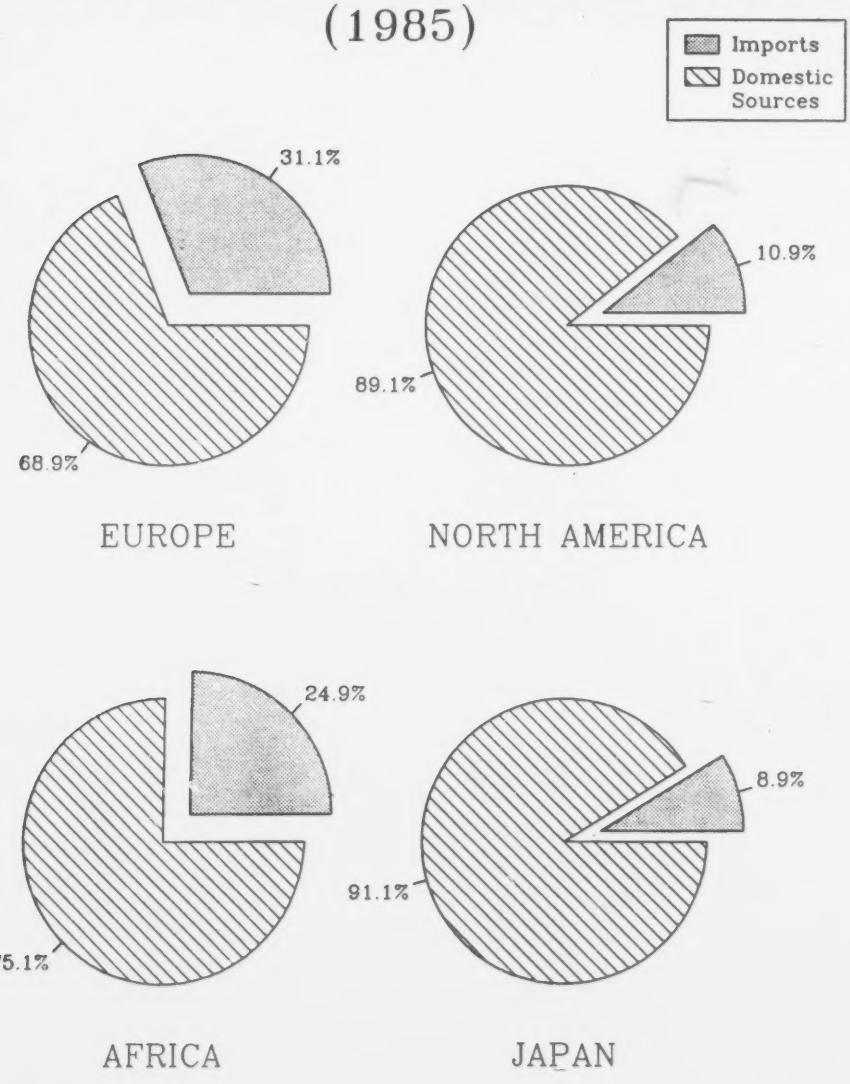
LUMBER MARKETS IMPORT PENETRATION LEVELS (1985)



Source: FAO

CHART 3

WOOD BASED PANEL MARKETS IMPORT PENETRATION LEVELS (1985)



Source: FAO

Statement

Pharmaceutical Manufacturers Association

GERALD J. MOSSINGHOFF

PRESIDENT

PHARMACEUTICAL MANUFACTURERS ASSOCIATION

SUBMITTED TO

THE SUBCOMMITTEE ON TRADE

COMMITTEE ON WAYS AND MEANS

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 16, 1989

Mr. Chairman and Members of the Subcommittee:

The Pharmaceutical Manufacturers Association ("PMA") appreciates the opportunity to submit this statement to the Subcommittee in connection with your hearings regarding the United States Trade Representative's identification of priority practices and countries under the "Super and Special 301" provisions of the Omnibus Trade and Competitiveness Act of 1988. We appreciate the Subcommittee's interest in the implementation of this new Act.

PMA member companies also deeply appreciate the efforts of the Committee in the last Congress in developing this extremely important legislation and, in particular, those provisions designed to promote increased protection of intellectual property in other countries. Many of our member companies are heavily engaged in overseas markets and are all too familiar with the lack of intellectual property protection in some countries, as well as the existence of other unfair trade practices.

The Pharmaceutical Manufacturers Association represents more than 100 research-based pharmaceutical companies with 1988 sales of over $46 billion worldwide. About one-third or $16.3 billion of those sales were overseas. Through their own privately financed research and development, the research-based pharmaceutical industry -- here and abroad -- discovers most, and develops virtually all, of the new medicines introduced into world markets.

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America's research-based pharmaceutical industry's commitment to research and development would be impossible without adequate and effective intellectual property protection, most importantly patents and trademarks. In no other industry are inventions which cost so much to discover and develop so easily and cheaply copied by patent pirates. Nations which provide adequate intellectual property protection appropriately share in the true cost of today's medicines and tomorrow's cures; those which deny such protection simply steal from those whose enterprises have saved untold millions of lives in this century and improved the quality of life for countless others.

A major milestone in U.S. efforts to persuade other countries to adhere to fair trade standards and provide adequate intellectual property protection was the enactment of the 1984 Trade Act. That effort was reinforced by passage last year of the landmark Omnibus Trade and Competitiveness Act.

We applaud the efforts of both the Executive and the Legislative Branches of the Government in encouraging respect for intellectual property worldwide. Through those efforts -- particularly the work of the U.S. Trade Representative, the Department of Commerce and this Committee -- significant progress has been achieved.

Recent U.S. Government Statement on Special 301s

PMA supports the U.S. Trade Representative's decision to designate a number of nations to a so-called "priority watch list" for 150 days. This list includes five of seven countries which PMA identified to Ambassador Carla Hills as deserving priority attention under Section 1303 of the 1988 Trade Act. The five countries are Brazil, India, Korea, Mexico and Thailand. Two other countries identified by PMA for Special 301 action -- Argentina and Chile -- were not included in the priority list, although we note that they are included in the broader 17-country "watch list." However, it is our understanding that this listing in no way affects forthcoming decisions based on the ongoing negotiations pursuant to PMA's petitions against these two countries for their denial of patent protection for pharmaceutical products. PMA withdrew its petition against Chile in April 1988 because negotiations with Chile appeared promising.

With respect to the announced procedure, it is also our understanding that if during the watch period progress is not made or ground is lost in any specific case, the nation involved can be removed from the watch list and immediately cited for Special 301 action. In any event, at the end of this 150-day period those nations with respect to whom significant progress had not been made would then be named for Special 301 action.

The Pharmaceutical Manufacturers Association supports the effort to improve intellectual property protection standards worldwide through the GATT; however, we do not consider a country's cooperation in the GATT process to be an adequate justification for exemption from the Special 301, especially if the country has been unwilling to modify properly its own legislation. PMA's position is that any decision at the end of the 150-day period be based on factors which include concrete, bilateral steps towards enacting effective patent protection for pharmaceutical products.

Review of Seven Countries Identified by PMA

Thailand - As noted in the official USTR 1989 National Trade Estimate Report on Foreign Trade Barriers, "Thailand's patent law inter alia denies product patent protection for food and beverages, pharmaceuticals and pharmaceutical ingredients and agricultural machinery. Other deficiencies include an insufficient term, overly broad compulsory licensing provisions and a requirement that the patent holder work the invention in Thailand to avoid compulsory licensing or patent cancellation." Faced with two deadlines under the U.S. GSP program in 1988 to improve its patent system, Thailand has chosen so far to do nothing to stop patent piracy. Although the U.S. Government removed some of Thailand's GSP benefits in January and named Thailand to the Special 301 priority watch list, the country has not indicated at any point over the past year that it is prepared to take any meaningful steps to provide effective intellectual property protection. Special 301 is the only appropriate mechanism left that can show the Thais how seriously we take this problem.

Brazil - Also, as noted in the 1989 USTR report, "Brazil does not provide either product or process patent protection for chemical compounds, foodstuffs or chemical/pharmaceutical substances . . . Brazil requires a patent owner to work the patented invention in Brazil. A third party may request a compulsory license if a patent owner has failed to work the patent within three years of issuance or if exploitation has been discontinued for more than one year unless a force majeure is proven." The Brazilians, whose anti-pharmaceutical patent policy is the most egregious, have sustained a sanction pursuant to an earlier Section 301 petition. Still, the Government of Brazil is unwilling to negotiate on this matter and, indeed, is challenging the U.S. Government's sanction before the GATT. This country warrants special consideration, and early action to take additional measures to encourage Brazil to improve its intellectual property policies toward pharmaceuticals is essential.

In this regard, PMA on June 1 submitted a request to USTR for review of Brazil's GSP status as a beneficiary developing country as a result of the continuing refusal of the Government of Brazil to provide adequate and effective product and process

patent protection for pharmaceutical products. Under the 1984 amendments to the Trade Act of 1974, the failure of a country to provide adequate and effective protection of the intellectual property rights of foreign nationals constitutes a basis for the revocation of that country's designation as a beneficiary developing country.

PMA filed the GSP petition in the belief that the review and revocation of Brazil's GSP status as a beneficiary developing country represents an additional trade remedy that may be applied, if necessary, in order to encourage the Government of Brazil to amend its patent law to respect the intellectual property rights of PMA members. PMA hopes that the initiation of an investigation into Brazil's GSP status, in addition to the trade measures that have been applied thus far, including trade sanctions under Section 301 and placing Brazil on a priority watch list under the Special 301 provisions of the Trade Act of 1974, as amended, will serve to encourage the Government of Brazil to take serious and meaningful measures to amend its patent law.

India - Again, as noted by the USTR, "India's patent protection is weak and has especially adverse effects on U.S. pharmaceutical and chemical firms. India's Patent Act prohibits patents for any invention claiming substances intended for use or capable of being used as a food, medicine or drug or relating to substances prepared or produced by chemical processes. Many U.S. invented drugs are widely reproduced since patent protection is not available. There are other important exclusions from patentability as well . . .. Processes for making such substances are patentable subject matter, but the patent term for these processes is limited to the shorter of five years from patent grant or seven years from patent filing. This is usually less than the time needed to obtain regulatory approval to market the product."

In addition, India does not recognize well-known international trademarks, even if the marks have been commercialized in India. Moreover, India does not intend to improve its intellectual property protection regime. In sum, it is one of the world's two leading critics in the drive to raise the level of intellectual property protection globally. The United States would have sent the wrong signal if it did not identify India for the Special 301-priority watch list. We also believe that the U.S. Government acted appropriately when it also identified India for Super 301 action.

Mexico - As stated by the USTR, "In 1986, Mexico improved its patent law by extending process patent protection to a variety of inventions and extending all patent protection from 10 to 14 years." However, the Mexican patent law specifically denies product patent protection to pharmaceutical products until 1997,

thus precluding any effective protection until the next century. Mexico, despite having lost GSP benefits as a result of these measures, has been unwilling to properly amend its patent law. Nonetheless, it has recently indicated its willingness to reconsider its patent law.

Argentina - Again, quoting from the USTR report, "The Argentine patent law does not provide patent protection for pharmaceutical products. Only the process can be patented . . .. In addition, a patent lapses if either the product is not produced or the process is not used locally within two years of the grant of the patent or if use is interrupted for two years. This practice is inconsistent with the Paris Convention (Lisbon Act) to which Argentina is a party. Owners of improvement patents are entitled to a compulsory license to the patent on which their improvement is based. After PMA submitted a petition, the United States initiated a section 301 investigation on September 23, 1988, concerning patent protection for pharmaceuticals. Bilateral consultations were held with Argentina in December 1988."

Argentina, whose local industry is the most rapacious infringer of patented pharmaceutical products in the Western Hemisphere, has made no meaningful effort pursuant to a Section 301 petition to address the U.S. pharmaceutical industry's and the U.S. Government's complaints regarding their unsatisfactory product patent policy. Thus, the U.S. should continue to keep pressure on this country and enact meaningful trade sanctions.

Chile - With respect to Chile, the USTR concluded that "Pharmaceuticals sales in Chile totaled about $160 million in 1987. The [formerly] 100% state-owned Laboratorios Chile has increased its market share from 12 percent in 1981 to 25 percent in 1987. Research-based U.S. pharmaceutical companies operating in Chile are being pushed out of the market due to the lack of patent protection. Two U.S. pharmaceutical firms have left Chile, one closed its factory and four have reduced operations since 1982." Chile, which committed itself to amend its patent law following the filing of a Section 301 petition by the U.S. pharmaceutical industry, has drafted a new law that contains several provisions which would provide less than adequate protection. U.S. Government pressure must be continued in order to attain a sound patent law.

Korea - As noted in the USTR report, "In 1987, Korea enacted laws providing for improved protection of patents and copyrights including copyright protection for computer software. Trademark licensing regulations were relaxed in 1986 and revised to ease maintaining registration of foreign marks. However, Korea's enforcement of these laws has been lax, and has begun to improve only recently . . .. U.S. pharmaceutical companies have complained that Korea's patent procedures have the effect of discriminating against foreign patent-holders."

In addition, the 1989 USTR report specified that in Korea, "All foreign investment applications above $3 million or 50 percent equity must be approved by the Ministry of Finance. That ministry then passes the applications to other ministries concerned with the particular investment. The approval process often becomes a series of protracted negotiations with the ministries that represent the interests of competing Korean industries . . .. Korea's investment restrictions and approval practices may be contrary to its obligations under the bilateral FCN treaty. The United States has often asked Korea to remove all discriminatory practices affecting U.S. investment."

As indicated by the above USTR analysis, our problems with Korea are two-fold. The Government continues to demonstrate both a lack of commitment to process patent enforcement and a flagrant disregard concerning investment access to the Korean market. U.S. pharmaceutical firms face poor patent enforcement, the possibility of extensive and costly local clinical testing requirements, requirements to manufacture (chemically synthesize) locally and joint venture requirements.

We would like to congratulate Ambassador Hills on the agreements that were reached with Korea on May 19 to address Korea's barriers to trade and investment. When fully implemented, these agreements should represent a major step forward in the Administration's efforts to open Korea's markets to foreign competition. If the problem with the lack of patent enforcement can also be resolved, we look forward to the opportunities that these new agreements might create for the U.S. pharmaceutical industry.

Conclusion

There has been significant progress in encouraging individual countries to increase protection of intellectual property as a self-serving way of enhancing their own commercial development while at the same time living up to accepted international norms of fair trade. And there is a growing awareness in bilateral and multilateral fora of the critical importance of intellectual property protection to scientific and technological progress.

But there are also countries -- most notably Brazil and India -- which seem determined to stand against this tide. They are increasingly isolated in the international arenas, but they represent a major challenge to the United States and our responsible trading partners.

We strongly support the Congress for enacting Section 1303 as the Special 301 on intellectual property protection. Its intent was to attack egregious foreign practices on a pragmatic,

bilateral basis. We also applaud the USTR's action to strongly enforce the provisions in defense of intellectual property protection contained in the trade legislation enacted by the Congress last year. We will support the Administration in its efforts over the coming months to secure meaningful commitments to protect intellectual property rights from those countries that have been identified for action.

Thank you for this opportunity to present our views.

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